ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

AAA Celebrates 75 Years, 56 DISP. RESOL. J. 45 (2001).
This Article offers an array of excerpted articles about arbitration published between 1937 and 1977. The excerpts show the progression in acceptance of arbitration and hurdles that the American Arbitration Association (AAA) has overcome in its seventy-five year history. Authors include a former AAA president, a former Secretary of State, and Dean Roscoe Pound. Article topics range from how arbitration can avoid stomach ulcers to the Japan-American Arbitration Agreement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{125} COMPARISONS: HISTORICAL

Roger I. Abrams, *Off His Rocker: Sports Discipline and Labor Arbitration*, 11 MARQ. SPORTS L.J. 167 (2001).
This Article describes the 1999 John Rocker professional baseball incident and the grievance arbitration proceedings that followed. The Article focuses on the legal implications of disciplining professional baseball players and the labor arbitration system that exists to appeal such discipline.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Thomas Adcock, *Union Side or Management? Young Attorneys See Positives on Both Sides of Labor Practice*, N.Y. L.J., Feb. 23, 2001, at 16.
This Article discusses the differences between working for labor or management as a young attorney. Management work pays more and the work is similar to labor, but work on the labor side allows a young attorney to start substantive work immediately. This is unlike other areas where an attorney has to wait to be assigned cases. In addition, working for the labor side gives an attorney a sense of contributing to overall justice for workers.
{74} SUBJ MATTER: GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

ADR Helps Ease the Backlog, N.J. L.J. Sept. 3, 2001 at 18.
This Article notes that the backlog of cases in the New Jersey legal system is being eased, in part due to the increased use of alternative dispute resolution. Alternative dispute resolution accomplishes this by forcing parties to try and settle early, thus removing their cases from the docket. In addition, in larger

cases, some of the issues can be resolved before trial, shortening the length of the proceeding.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Advisory, Conciliation and Arbitration Service, *Calls to ACAS Top Three-Quarters of a Million*, 734 INDUS. REL. SERVICES EMP. TRENDS 2 (2001).
This Article is from a UK source. It highlights not only how the Advisory, Conciliation and Arbitration Service (ACAS) offers employers and employees the option of settling their industrial disputes via conciliation, mediation, or arbitration, but also how the number of calls to the organization have reached nearly 765,000, an increase of seven percent between spring 2000 and spring 2001.
{93} SUBJ MATTER: LABOR—GENERAL

Kathryn Monahan Ainsworth, *The Nuts and Bolts of ADR: Alternative Dispute Resolution for Commercial Cases*, 16 ME. B.J. 226 (2001).
This Article provides a basic discussion of alternative dispute resolution (ADR) within the context of commercial law. The Author discusses the various ADR options available for clients in commercial cases and how to select the most appropriate ADR process for a particular case. The Author also provides important factors to consider in the selection of a neutral.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL

James J. Alfini & Catherine G. McCabe, *Mediating in the Shadow of the Courts: A Survey of the Emerging Case Law*, 54 ARK. L. REV. 171 (2001).
The Article discusses how mediation has become more institutionalized and how the good faith requirement in mediation adversely affects the mediation process in a couple of ways. For example, the good faith requirement affects the role of the mediator and the way in which the parties participate.
{102} SUBJ MATTER: PUBLIC POLICY

Joseph Allegretti, *A Christian Perspective on Alternative Dispute Resolution*, 28 FORDHAM URB. L.J. 997 (2001).
This Article considers why and how Christianity provides a theoretical justification for alternative dispute resolution (ADR) and what Christianity can teach us about the application and practice of ADR. The Author suggests that Christians should be predisposed to supporting methods of conflict resolution that emphasize non-violence, forgiveness, and connectedness between persons. The Article also explains three principles for a Christian approach to ADR: avoiding violence, interest in the growth of the parties, and encouraging each party to see the other party's point of view.

{124} COMPARISONS: CROSS-CULTURAL
{151} ROLE OF LAWYERS

Andrea A. Alonso & Kevin G. Faley, *Is There a Duty To Avoid Litigation*, 43 FOR DEF. 51 (2001).
Trials have become so cumbersome that they have become something of an anomaly, and yet lawsuit filings remain as proliferate as ever. Litigation is destructive to relationships, may embarrass a client, and can lead to pyrrhic victories. Attorneys have a duty to foster flexible and innovative developments in the American justice system and, accordingly, should advise all clients, even those professing initially to be dead-set on litigious resolution, to the advantages offered by extra-judicial alternatives.
{102} SUBJ MATTER: PUBLIC POLICY
{151} ROLE OF LAWYERS

Barrie Althoff, *Confidentiality in the ADR Process*, 55 WASH. ST. B. NEWS, Aug. 2001, at 41.
The Article looks at a lawyer's duty of confidentiality in terms of three roles—the lawyer as a client representative/advocate, the lawyer as a third-party neutral (*e.g.*, arbitrator, mediator), and the lawyer as a party in alternative dispute resolution (ADR) proceedings. The analysis is based on Washington state statutes, and the overarching theme is that a lawyer who is willing to wear multiple hats in an ADR proceeding must carefully and cautiously consider confidentiality interests in order to avoid interrogations on their ethics and, potentially, career-damaging sanctions.
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Robert J. Ambrogi, *Resolving Disputes Online*, N.J. L.J., July 16, 2011 at 30.
A number of websites are offering alternative dispute resolution services online. This Article profiles several websites that offer these services. Some sites resolve disputes using only software, and not people. Parties using the website will submit their offers and demands, and the program, using a set of formulae, will create a settlement. Other websites use real people and create a "virtual" courtroom or mediation.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

Robert J. Ambrogi, *Resolving Disputes Over The Web*, 44 RES GESTAE 36 (2001).
This Article reviews the introduction and availability of alternative dispute resolution (ADR) mechanisms in cyberspace. Several computer sites are reviewed, beginning with the introduction of "The Virtual Magistrate." The Article also reviews a list of web sites that do not directly provide dispute resolution online, but instead contain information and resources about ADR in general.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Nancy Amoury Combs, *Diplomatic Adjudication*, 2 CHI. J. INT'L L. 267 (2001).
The Author describes her experience as a legal adviser to one of the American judges in the Iran-United States Claims Tribunal in The Hague, focusing on its unique characteristics, which include party control, submission time, diplomacy, and voting pattern ramifications. The Author concludes that effective Tribunal judges do not behave as advocates for their respective nations, and that the Tribunal has established an important foundation of accommodation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Steven Andersen & Kersten Norlin, *International ADR Expansion: Challenges and Issues*, CORP. COUNS., Sept. 1, 2001, at A3.
This Article explains that there has been a rise in international disputes due to the increase in globalization and free trade. The Article explains that challenges to acceptance of international dispute resolution still remain. This Article describes the problem of enforceability and the difficulties that arise in drafting international contracts and specifically targets the challenges which multinational corporations should consider when preparing to undertake ADR processes to resolve international disputes.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Nuno Sergio Marques Antunes, *The 1999 Eritrea-Yemen Maritime Delimitation Award and the Development of International Law*, 50 INT'L & COMP. L.Q. 299 (2001).
This Article discusses the second award in the arbitration between Eritrea and Yemen regarding maritime delimitation of several islands in the Red Sea. In particular, the Author focuses on the traditional fishing regime and the importance of this decision on international law. Including a thorough

discussion of traditional maritime law, the Author also comments on the influence of Islamic legal and religious traditions on the arbitration decision.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Norman B. Arnoff & Sue C. Jacobs, *Mandatory Engagement Letter/Retainer Pact, Fee-Dispute Arbitration (New Rules Govern Information That Must Be Sent to a Client)*, N.Y. L.J., Feb. 2, 2002, at 3.
New Appellate Divisions and Office of Court Administration pronouncements call for lawyers to provide clients with a timely written letter of engagement or retainer contract if fees are estimated at or over $3000. Proper use of letters of engagement or retainers protects attorneys against causes of action. The letter for engagement or retainer must also advocate mediation and arbitration as a more cost-effective way to resolve the dispute.
{133} COURT REFORMS
{127} REQUIREMENTS: MANDATE TO USE
{151} ROLE OF LAWYERS

Norman Arnoff & Sue C. Jacobs, *Lawyer-Client Dispute Resolution: Time and Cost Effectiveness*, N.Y. L.J., Apr. 10, 2001, at 1.
To preserve the equities of time and cost effectiveness for both lawyers and their clients, this Article examines the current rules of New York courts. The Authors consider methods that should allow for expansion of the current rules to make lawyer-client dispute resolution (LCDR) the proper tool for settling all fee and malpractice disputes in the state of New York by making mediation and arbitration mandatory actions.
{127} REQUIREMENTS: MANDATE TO USE

{21} MED: RELATED PROCESSES—GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Robert L. Arrington, *Employment Dispute Resolution: An Idea Whose Time has Come?*, 37 TENN. B.J. 32 (2001).
This Article suggests that, in light of the U.S. Supreme Court decision in *Circuit City Stores, Inc. v. Adams*, employers should consider including arbitration language in employment applications and contracts. Factors are listed for employers to consider when implementing an "Employment Dispute Resolution" procedure. The Article concludes that most employers will want to carefully consider the effects of implementing such a procedure.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Angel M. Aton, Note, *The Debate Over the Unionization and Collective Bargaining of Private Physicians*, 18 HOFSTRA LAB. & EMP. L.J. 659 (2001).
Currently, physicians are struggling to unionize their profession and participate in any collective bargaining agreements that might improve their working conditions. This Note seeks to analyze the controversy surrounding physician unionization and collective bargaining. First, the Authors discuss the medical profession and how it relates to a need to unionize. Second, legal problems surrounding attempts to unionize are analyzed. Third, recently proposed legislation by Congress is analyzed for its benefits in erasing some of the existing problems of unionization.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{144} LEGISLATION

Jeffrey Axelrad, *Federal Tort Claims Act Administrative Claims: A Better Way to Resolve Federal Tort Claims*, GP SOLO & SMALL FIRM LAW., Sept. 2001, at 38.
The Federal Tort Claims Act, allows the head of each government agency to use settlement proceedings to resolve disputes. In this brief Article, the Author, who is the Director of the Federal Tort Claims Act staff, praises the new process for its effectiveness and encourages all to make use of it.
{110} SUBJ MATTER: OTHER TORTS

Herman Ayayo, *High-Tech Institute—Langdon Talks About Fast-Track Mediation, Appeals Processes*, 93 TAX NOTES 1030 (2001).
The Internal Revenue Service (IRS) has released new programs to fast-track mediation and appeals initiatives. These pilot programs, as presented by Larry Langdon, Commissioner of the IRS Large and Midsize Business Division (LMSB), will allow the IRS and LMSB taxpayers to resolve audit and appeal issues within 120 days.
{108} SUBJ MATTER: TAX
{81} SUBJ MATTER: CORPORATE
{21} MED: RELATED PROCESSES—GENERAL

Cheryl L. Baber, *Alternative Dispute Resolution in the United States District Court for the Northern District of Oklahoma*, 36 TULSA L.J. 819 (2001).
Federal courts have been part of the growing legal phenomenon of alternative dispute resolution (ADR). This Article discusses ADR in federal courts nationwide, and the legislation that affects it. The Article focuses on the effect of the ADR program in the Northern District of Oklahoma over the past decade. The Article also includes an exploration of the ethical issues that arise in the context of mediation.

{133} COURT REFORMS
{138} ETHICS: GENERAL

Joseph E. Bachelder III, *Negotiating Options for New Executives*, N.Y. L.J., Oct. 31, 2001, at 3.
This Article discusses some solutions for the problems senior-level executives experience in negotiating stock options when moving to a new employer. It covers the make-whole issues, such as forgivable loans, and issues as to future awards, such as the Black-Scholes value, options valued in same manner, granting future options, and stock option grants. It also advocates that often the senior-level executive is in a better position to want one form of options over the others.
{81} SUBJ MATTER: CORPORATE
{106} SUBJ MATTER: SECURITIES
{108} SUBJ MATTER: TAX

Hans Bagner, *Confidentiality—A Fundamental Principle in International Commercial Arbitration?*, J. INT'L ARB., Apr. 1, 2001, at 243.
The Article discusses the extreme importance of confidentiality in the field of international commercial arbitration. A controversial case in Australia, *Esso/BHP v. Plowman*, rejected the prevailing view that confidentiality was an absolute and that a duty of confidentiality existed. This case has not been followed at all, and has been criticized by courts since. The Article explains the London Court of International Arbitration's position that confidentiality is vital though it is only a common law rule. The Article also points out that no country has an express provision for confidentiality, except for New Zealand, but all countries seem to follow the common law rule strictly. The Article then goes on to discuss the important Swedish decision, *Bulbank v. AIT*, that affected the international arbitration community. The Swedish Supreme Court gave its decision on October 27, 2000, which ruled that there is no legal duty of confidentiality implied in an arbitration agreement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{133} COURT REFORMS

Nadine Balkanyi-Nordmann, *The Perils of Parallel Proceedings: Is an Arbitration Award Enforceable if the Same Case Is Pending Elswhere*, 56 DISP. RES. J. 20 (2001).
The Article discusses the complex problems that arise from parallel proceedings under the New York, Brussels, and Lugano Conventions. The Article uses a hypothetical to demonstrate many of the legal issues that occur when more than one proceeding involving the same causes of action and the

same parties are occurring in different countries. The Article explains that under the three Conventions, a court judgment or arbitration award can be enforced, despite parallel proceeding, or lis alibi pendens, existing in another country. The Article suggests that a broader interpretation of the Conventions and more attempts to reach international harmonization may be able to overcome the problems.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Diane H. Banks, *Mediator Focus: Paths to Mediation*, UTAH B.J., Dec. 1, 2001, at 26.
This Article suggests that adding a mandatory mediation provision in a contract greatly increases the likelihood of settlement; however, the clause should be well drafted and anticipate any exigencies rather than a mere boilerplate provision. A sample clause is included.
{21} MED: RELATED PROCESSES—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{136} ECONOMIC ADVANTAGES OF ADR

Steven P. Bann, *Digest of* Grasser v. United Healthcare Corp., N.J. L.J., July 30, 2001, at 77.
This is a digest from a recent New Jersey appellate decision. The court interpreted facts regarding an employee's agreement to arbitrate disputes with their company, and decided that the standard that the employee's waiver be clear, specific, and unambiguous was not met to the degree required to survive summary judgment. The key lesson from the case is that it is poor public policy to hold average readers, without legal training, to a standard of interpretation akin to that of an attorney or sophisticated layperson.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven P. Bann, *Digest of* Taylor Milk Co. v. Int'l Brotherhood of Teamsters, AFL-CIO, N.J. L.J., July 30, 2001, at 63.
This is a digest from a recent U.S. Court of Appeals for the Third Circuit case which overruled the lower court's decision not to review a collective bargaining agreement provision involving damage collection by third parties. The district court's fear was that, in analyzing the contract, they would be usurping the role of arbitrators with whom the parties had originally agreed to resolve disputes. The key portion of the holding is that it is common and proper for a district court "to determine what the result of a dispute resolution

process would have been if one party had not forgone the opportunity to seek arbitration."
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven Bann, *Business Law—Arbitration—Securities Brokers*, N.J. L.J., May 28, 2001, at 98.
In *Jansen v. Salomon Smith Barney*, the plaintiffs requesting compensation for negligent financial advice given to their deceased father were still bound by an arbitration agreement signed by their father. The agreement the deceased signed included a clause binding potential heirs. The court held that the plaintiffs must arbitrate if a substantial nexus exists between the agreement's subject matter and plaintiff's claim.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{106} SUBJ MATTER: SECURITIES

Steven Bann, *Civil Practice—Arbitration—Limitations of Actions*, N.J. L.J., May 7, 2001, at 81.
This Article reviews the decision in *Corcoran v. St. Peter's Medical Center*, which held that a party to an arbitration proceeding who filed and served a demand for trial de novo is entitled to the trial despite the fact that the service was made to the opposing party's former attorney. Substantial compliance and the fact that opposing counsel was not denied the opportunity to prepare for trial were the primary reasons for this holding.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven P. Bann, *Insurance—Arbitration—PIP*, N.J. L.J., Feb. 5, 2001, at 96.
This Article discusses inter-company insurance arbitration on the issue of whether "follow the family" exceptions hinder a New York insurance company from paying PIP contribution to a New Jersey insurance company. A New Jersey pedestrian, with New Jersey insurance, was struck as by a New York driver, with New York insurance. The New Jersey company paid medical expenses, then sued the New York company for contribution. The court ruled that the New York company had to pay a PIP contribution to the New Jersey company.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE

Steven P. Bann, *Labor Law—Arbitration—Police*, N.J. L.J., June 4, 2001, at 76.
This is a synopsis of a New Jersey court opinion finding that an arbitrator overstepped her bounds by awarding back pay to an officer. The officer was acquitted by a jury of brandishing a gun while off duty, but had retired prior to the commencement of departmental proceedings. The collective bargaining agreement required the completion of departmental disciplinary proceedings prior to the award of back pay, and the arbitrator's award was struck down.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Steven P. Bann, *Civil Practice—Arbitration*, N.J. L.J., June 4, 2001, at 81.
This Article summarizes the decision of the U.S. Court of Appeals for the Third Circuit in *Medtronic Ave, Inc. v. Advanced Cardiovascular Systems, Inc.* The court, per Judge Greenberg, affirmed a district court decision denying Advanced Cardiovascular Systems' motion to stay litigation brought by Medtronic, notwithstanding an arbitration agreement. The court held that Medtronic's suit against ACS involved claims not covered by the arbitration agreement.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven P. Bann, *Federal Arbitration Act Standards Apply Despite Generic Choice-of-Law Clauses*, N.J. L.J., June 18, 2001, at 65.
This Article summarizes the decision of the U.S. Court of Appeals for the Third Circuit in *Roadway Package System, Inc. v. Kayser*. The Third Circuit, per Judge Becker, held that a generic choice-of-law-clause in an agreement to arbitrate did not demonstrate "clear intent" to replace the Federal Arbitration Act's default standards with those of the state cited in the choice-of-law clause.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven Bann, *Business Law—Arbitration—Corporations*, N.J. L.J., Dec. 17, 2001, at 66.
This Article reviews a judicial dispute between plaintiff DuPont and defendants' Rhodia Fiber and Rhodia stemming from a failed joint venture. At issue before the U.S. Court of Appeals for the Third Circuit was the district court's denial of the defendant's motion to compel arbitration despite a valid and enforceable arbitration agreement. The Third Circuit affirmed the lower court's holding.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Steven P. Bann, *Civil Practice—Arbitration—Attorney's Fees-Discrimination*, N.J. L.J., Feb. 5, 2001, at 56.
This Article discusses the *Riding v. Towne Mills Craft Centre* case decided by the New Jersey Supreme Court. In that case, Plaintiff was awarded damages, and the award did not mention attorney's fees. Neither Plaintiff nor Defendant requested a de novo review of the award before the thirty day deadline. Before the fifty day deadline to confirm the award had passed, Plaintiff asked for attorney's fees. Defense counsel objected stating that it did not appeal the award because it was lulled into believing attorney's fees were included in the award. The district court denied Plaintiff's request; the court of appeals reversed, stating that Plaintiff was a prevailing party entitled to post-award damages. The New Jersey Supreme Court upheld the decision.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

William T. Barker, *Extrajurisdictional Practice by Lawyers*, 56 BUS. LAW. 1501 (2001).
The Article contains both an extremely detailed history of the difficulties lawyers have had as consultants in out-of-state matters and notes the increasing need for relaxation of strict jurisdictional practice rules. However, conceding that such state jurisdictional rules are unlikely to change soon, the Author gives a synopsis of the permissible ways of working within the existing rules to best effectuate matters outside of the jurisdiction where one is licensed to practice.
{104} SUBJ MATTER: REGULATORY
{138} ETHICS: GENERAL

Rupert M. Barkoff, *Arbitration Clauses in Franchise Agreements; Anything but a Panacea*, N.Y. L.J., May 24, 2001, at 3.
While intending to resolve franchise disputes quickly, cheaply, and with minimal destruction to relationships, arbitration clauses in franchise agreements have been a way for the franchisor to write all the rules to its advantage. The Author argues that when franchisees contest arbitration agreements, state courts tend to protect their own citizens, and arbitration becomes far more costly than litigation because parties must first litigate whether the arbitration clause is valid.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE

Robert A. Baruch Bush, *Mediation and ADR: Insights From the Jewish Tradition*, 28 FORDHAM URB. L.J. 1007 (2001).
This Article identifies insights into traditional Jewish sources that have enriched the Author's understanding of conflict resolution and mediation.

The Author discusses teachings from the Talmud, explicitly identifying a preference for compromise and mediation over adjudication. The Author discusses how traditional Jewish sources place the highest value on the achievement of compromise and specifically mentions how rabbinical judges are required to promote a form of "judicial mediation."
{124} COMPARISONS: CROSS-CULTURAL
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Hadley Batchelder, *ADR in Common Interest Developments: Oxymoronic or Just Moronic?*, 23 T. JEFFERSON L. REV. 227 (2001).
Amendments to common interest developments in the Davis Sterling Act are poorly drafted and will have little success in achieving the goals of the California legislators or commonly accepted goals of alternative dispute resolution (ADR). The paper discusses the potential disputes, committee reports to the Act, critical analysis of real world effects, and the effects of mandatory ADR on common interest developments in California.
{78} SUBJ MATTER: COMMUNITY
{90} SUBJ MATTER: RENTAL HOUSING
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

R. Glenn Bauer, *Upsetting a Charter Party Arbitration Award: Are the Courts Lowering the Bar on Judicial Review?*, 25 TUL. MAR. L.J. 419 (2001).
At one point, courts shunned arbitration clauses as contracts made to usurp their power. However, given the pro-arbitration stance now taken by courts, and passage of the Federal Arbitration Act (FAA), judicial review of arbitration awards has become very limited. In contrast to this development, there now appears to be a difference of opinion among the courts as to the extent of judicial review concerning the meaning of "manifest disregard of the law." Although this expression is not found anywhere but in dicta, it has become the basis for some courts to expand review of awards to an extent which the author argues conflicts with the purpose of the FAA.
{133} COURT REFORMS

Ruth Greenspan Bell, *Communications Breakdown*, ENVTL. F., Nov. 1, 2001, at 21.
The Article addresses the difficulties arising out of communication among environmental professionals during international negotiations. Problems arising because of different languages, histories, and cultures frequently impede efforts to create stronger environmental regimes. The Article focuses on the art of compromise in the policy formation process. The Article uses

various examples to suggest that different traditions can co-exist and even work productively together if the motivation on both sides is relatively equal but not necessarily identical.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{124} COMPARISONS: CROSS-CULTURAL

Brenda J. Bellonger, *American Indian Children in Dependency and Neglect Cases: A Mediation Project*, COLO. LAW., Sept. 1, 2001, at 25.
This Article discusses the Permancy Planning for Indian Children Project funded partially by the Children's Bureau of the North American Indian Legal Services. This Article explains that the goal of the project is to resolve dependency and neglect cases involving Indian children by bringing inntereste dparties together through mediation. The Article highlights the benefits of using this program to resolve disputes, but also notes that the project is under utilized by the judiciary.
{102} SUBJ MATTER: PUBLIC POLICY
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

David Bender, *ADR and Intellectual Property: An Ideal Marriage?*, CORP. COUNS., May 2001, at A3.
This Article discusses alternative dispute resolution (ADR) as an alternative to litigation in the intellectual property arena. The Article analyzes the forms of ADR currently used to settle intellectual property (IP) disputes and details the positive aspects of using various ADR techniques. Additionally, the Author provides sound reasoning as to why ADR is suitable to resolve IP disputes, including the technical expertise available, reduced costs, and efficiency.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{136} ECONOMIC ADVANTAGES OF ADR

Robert D. Benjamin, *Considering Mediation: What Lawyers and Clients Should Know*, GP SOLO & SMALL FIRM LAW., Oct. 2001, at 28.
The Author addresses many of the negative preconceived ideas that prevent lawyers and clients from pursuing mediation and offers some simple guidelines for recommending mediation, selecting a mediator, establishing mediation parameters, and preparing clients for the process. The Article offers a discussion of the overall merits of mediation, and explains the lawyer's roles and responsibilities in the process—including issues of ethical considerations, confidentiality, discovery, good faith, and reaching just results.
{21} MED: RELATED PROCESSES—GENERAL

{151} ROLE OF LAWYERS
{138} ETHICS: GENERAL

Jean-Paul Beraudo, *The Arbitration Exception of the Brussels and Lugano Conventions: Jurisdiction, Recognition, and Enforcement of Misjudgments*, 18 J. INT'L ARB. 13 (2001).
The Author discusses the Brussels and Lugano international conventions. The text of both of the agreements do not include rules governing arbitration. Thus, controversies have arisen regarding what rules have supremacy in arbitration matters. The Author uses recent cases to highlight the key issues in this debate, and makes his own suggestions on how to resolve the current dispute.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Mark Berger, *Arbitration's Grand Slam Victory in the Supreme Court's 2000–2001 Term*, 72 PA. B. ASS'N. Q. 175 (2001).
Berger reviews four rulings favorable to enforcement of arbitration agreements made by the U.S. Supreme Court during the 2000–2001 term. The Article begins with a survey of the development of court enforcement of arbitration since the 1960s. The Article explores the effect of the U.S. Supreme Court rulings in *Circuit City Stores, Inc. v. Adams* (confirming employment arbitration), *Eastern Associated Coal Corp. v. United Mine Workers* (limiting a public policy exception to enforcement of arbitration awards), *Major League Baseball Players Ass'n v. Garvey* (limiting judicial review of arbitration awards), and *Green Tree Financial Corporation-Alabama v. Randolph* (enforcing an arbitration clause that was silent with respect to costs).
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Phyllis E. Bernard, *Teaching Ethical, Holistic Client Representation in Family ADR*, 47 LOY. L. REV. 163 (2001).
This Article reports on the efforts taken by the Author's law school to teach the processes of alternative dispute resolution (ADR) from a family law perspective. The Article touches on issues such as legal responses to domestic violence, ethical obligations to question a client efficiently, sensitivity on issues of domestic violence, and how the Model Rules of Professional Conduct govern both ADR and family law practices. The

Article serves as a resource to other law schools contemplating similar academic programs.
{83} SUBJ MATTER: EDUCATION
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{132} CONFIDENTIALITY
{155} TEACHING

Phyllis E. Bernard, *Only Nixon Could Go to China: Third Thoughts on the Uniform Mediation Act*, 85 MARQ. L. REV. 113 (2001).
In lieu of her thorough analysis of various aspects of the Uniform Mediation Act, the Author tentatively supports it. But she does emphasize that the real issues confronting mediation are not necessarily focused on in the act. She resolves that focus should be on improving the fairness of the mediation process itself, rather than on protecting mediators in unsuccessful mediations.
{21} MED: RELATED PROCESSES—GENERAL

Nathanael R. Berneking, Comment, *Don't Mow Over the Yard-Man Inference: Guarding Against Improper Modification of Welfare Benefits Provided in a Collective Bargaining Agreement*, 45 ST. LOUIS U. L.J. 261 (2001).
In the *Yard-Man* case, the U.S. Court of Appeals for the Sixth Circuit inferred that health and life insurance benefits secured through collective bargaining vested and were available to the retiree for life, despite ambiguous language in the contract, which had since expired. The Author of this Article defends this "Yard-Man Inference" and counters criticism by courts and academics, while advocating for the continued application of the inference to protect retirees until an acceptable legislative solution is devised.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Gwyn Bevan et al., *Can Mediation Reduce Expenditure on Lawyers?*, 31 FAM. L. 186 (2001).
The Authors explore the financial implications of committing Legal Services Commission funds to the support of family mediation. They undertake a sophisticated analysis of this problem, including a critique of the commonly employed measures of success when reviewing both mediation and lawyer services, *i.e.*, diversion from contested legal proceedings and the conclusion of those proceedings without resort to trial. The Authors conclude that these are inadequate measuring sticks for success in this area.
{21} MED: RELATED PROCESSES—GENERAL

Sofie Bielen, *Employing No-fault To Improve Safety: Belgium's Proposed Approach to Medical Error Using Alternative Dispute Resolution*, 19 PREVENTIVE L. REP. 13 (2001).
This Article analyzes the current Belgium system of medical liability litigation and discusses solutions to the growing alarm concerning medical error and patient safety. First, Belgium's current system is discussed as disadvantageous because it breeds contempt for the profession and is more time consuming and costly for all parties concerned. Second, Belgium's new legislation is discussed as a good solution because of its no-fault liability system and use of alternative dispute resolution to prevent the hassles and cost of litigation.
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{21} MED: RELATED PROCESSES—GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION

Kirk Blackard, *Assessing Workplace Conflict Resolution Options*, 56 DISP. RESOL. J. 58 (2001).
Discussing factors management should consider when looking at the needs of an organization, this Article reviews various conflict resolution options and outlines their potential benefits. Additionally, it presents an approach for management to use when deciding whether to adopt alternative dispute resolution (ADR) processes that includes an analysis of organizational effectiveness and how ADR could add economic value. Management is encouraged to look at its size, corporate culture, and level of conflict before making ADR program decisions.
{134} DISPUTE PREVENTION
{146} ORGANIZATION POLICIES & RULES

Ian Blackshaw, *Sporting Settlements*, 145 SOLIC. J. 640 (2001).
Blackshaw sees alternative dispute resolution as a favorable alternative to litigation in settling sports disputes. Mediation, in particular, is discussed as advantageous due to its focus on preserving and restoring relationships and the reluctance of British courts to solve sporting disputes. The Author mentions several organizations in Britain that have been set up to solve sports disputes, and the limitations of alternative dispute resolution in a sports context.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{21} MED: RELATED PROCESSES—GENERAL

Timothy S. Bland & Licia M. William, *High Court Upholds Pre-Dispute Employment Arbitration Agreements*, 37 TENN. B.J. 31 (2001).
In *Circuit City Stores, Inc. v. Adams*, the U.S. Supreme Court held that agreements to arbitrate employment disputes may be enforceable under the Federal Arbitration Act. An employment arbitration agreement may be enforceable only if the employee knowingly and voluntarily agrees to a fair arbitration process.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

J. Alberto Boada, *Liability in Negotiations Between Developers and Public Entities*, LOS ANGELES LAW., May 2001, at 25.
This Article discusses the concerns involving situations where developers deal with public entities and no deal is reached. Frequently these situations end up in arbitration as developers attempt to recover negotiations costs by alleging a failure to negotiate in good faith. Courts do not look favorably on these suits, and developers are often forced to assume the burden of failed negotiations.
{138} ETHICS: GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS

Alan L. Bogg, *The Political Theory of Trade Union Recognition Campaigns: Legislating for Democratic Competitiveness*, 64 MOD. L. REV. 875 (2001).
This Article examines some of the ways in which trade unions have campaigned recently to employers in the United Kingdom in order to be recognized by these employers as the official collective bargaining entities of the employees that they represent. It also compares the tactics and results of these campaigns in the United Kingdom to similar ones in the United States and discusses the ways in which such campaigns have succeeded and failed in both countries.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Laurence Boisson de Chazournes & Sarah Heathcote, *The Role of the New International Adjudicator*, 95 PROC. ANN. MEETING-AM. SOC'Y INT'L L. 129 (2001).
This Article addresses the conciliation procedures that are being globally institutionalized and the different arenas for negotiation and mediation that are being established on a regular basis. The Authors focus on issues of public interest affected by contemporary international dispute resolution

mechanisms and procedures. They also discuss the challenges the new international adjudicator faces.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Michael Booth, *Smith, Stratton Barred from Invoking Arbitration Clause To End-Run Jacob*, N.J. L.J., Dec. 10, 2001, at 885.
This Article briefs the recent New Jersey Supreme Court case *Heher v. Smith, Stratton, Wise, Heher, and Brennan.* A law firm tried to thwart arbitration of a withdrawing partner's dispute over benefits based on his failure to meet an "artificial" deadline for filing a notice of intent to arbitrate. The court stated that disallowing arbitration because of the failure to meet the deadline would permit the law firm to "benefit[ ] . . . [from] a covenant that is against public policy and [is] unenforceable."
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jacques H.F. Bourgeous, *Some Reflections on the WTO Dispute Settlement System from a Practitioner's Perspective*, 4 J. INT'L ECON. L. 145 (2001).
The Article advocates creation of standing World Trade Organization (WTO) dispute resolution panels, as opposed to the current system of appointment on a case-by-case basis. The Author believes uniform procedural processes should be adopted, including rules governing standing, issuing preliminary rulings, and determining the scope of the dispute. The operation of appeals procedures and whether any interim relief should be granted are also addressed.
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

Alan Boyle, *The Southern Bluefin Tuna Arbitration*, 50 INT'L & COMP. L.Q. 447 (2001).
This Article discusses why the decision of the International Tribunal for the Law of the Seas decision regarding jurisdiction for the southern bluefin tuna arbitration was incorrect. Boyle argues that the biggest mistake of the arbitrators was their unwillingness to treat the case as raising separate issues under the 1982 U.N. Convention on the Law of the Sea and under the 1993 Convention on the Conservation of Southern Bluefin Tuna.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Jason N. Bramlett, *Chipping Away at the Policy and Precedent in Favor of Mandatory Arbitration*, 54 ARK. L. REV. 285 (2001).
This Article explains that the Arkansas General Assembly has taken a highly active role in encouraging the use of alternative dispute resolution. The Arkansas assembly has passed laws concerning the use of mediation and arbitration. Today, in Arkansas there is widespread use of arbitration and mediation clauses in many different types of contracts. However, this widespread use of such clauses has caused fear of the potentially unfair consequences of mandating the use of such a forum.
{102} SUBJ MATTER: PUBLIC POLICY

Lynn S. Branham, *The Prison Litigation Reform Act's Enigmatic Exhaustion Requirement: What It Means and What Congress, Courts and Correctional Officials Can Learn From It*, 86 CORNELL L. REV. 483 (2001).
The Author looks at the Prison Litigation Reform Act of 1996 and the problems created by this Act. The Article examines the problem for prisoners when the grievance process does not offer them the monetary relief they desire. The Act makes it unclear whether prisoners have to exhaust the options through the grievance process before going to trial when they are seeking a monetary remedy that the process cannot provide. The Article also offers some recommendations for correction officers and courts.
{100} SUBJ MATTER: PRISONS
{128} REQUIREMENTS: STATUTORY OR RULES
{144} LEGISLATION

Beat Brechbuhl, *44th Congress of the International Association of Lawyers (UIA) in Buenos Aires: International Arbitration Commission*, 18 J. INT'L ARB. 239 (2001).
The forty-fourth Congress of International Association of Lawyers (UIA) in Buenos Aires met recently and discussed the recent changes and developments in Latin America, the mass-claim arbitration, and a "beauty contest" between the International Chamber of Commerce, the London Court of International Arbitration, and the American Arbitration Association. As to the developments in Latin America, the panel concluded that any changes in arbitration in Latin America were small, except for in Brazil. The mass-claim arbitration panel discussed how many claims are being lumped together to be arbitrated. For example, there is a group with 10,000 claims related to Nazi victims and the restitution of assets deposited into Swiss Banks by them during World War II. Finally, the Article discusses a "beauty competition" held between representatives of ICC, LCIA, and AAA.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Benjamin L. Brimeyer, *Bananas, Beef, and Compliance in the World Trade Organization: The Inability of the WTO Dispute Settlement Process To Achieve Compliance from Superpower Nations*, 10 MINN. J. GLOBAL TRADE 133 (2001).
As business transactions became global in reach, the shortcomings of the GATT's dispute resolution procedures were exposed. Consequently, the GATT was replaced with the World Trade Organization (WTO). In this Article, the Author examines two recent disputes brought before the WTO and finds that the WTO is not without its own faults. Specifically, this Article focuses on the challenges the WTO is encountering in achieving compliance with its rulings.
{92} SUBJ MATTER: INT'L

Wayde Brooks, Note, *Wrestling Over the World Wide Web: ICANN's Uniform Dispute Resolution Policy for Domain Name Disputes*, 22 HAMLINE J. PUB. L. & POL'Y 297 (2001).
In this Note, the Author looks at how alternative dispute resolution (ADR) processes have and could affect disputes regarding the use of Internet domain names. Specifically, the Author explores how the on-line dispute resolution policy adopted by the federal Internet Corporation for Assigned Names and Numbers (ICANN) has good intentions, but needs to take into account a greater variety of ADR practices because the current policy tends to be biased in favor of domain name challengers. The reasons for this, according to the Author, have to do with a failure in the current system to adequately notify respondents of a challenge to their domain names and the failure to include such respondents in arbitration hearings.
{76} SUBJ MATTER: COMMERCIAL
{81} SUBJ MATTER: CORPORATE
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Alexis C. Brown, *Presumption Meets Reality: an Exploration of the Confidentiality Obligation in International Commercial Obligation*, 16 AM. U. INT'L L. REV. 969 (2001).
This Article examines the critical issue of confidentiality in arbitration proceedings as it relates to international commerce. The Author clarifies the state of the law by analyzing relevant common and statutory law, institutional rules, contract theory, and scholarly works. The myths about confidentiality in international arbitration are debunked, followed by an

overview of current cases in the field, an extensive analysis of the duty of confidentiality, and suggestions for party protection of confidentiality.
{132} CONFIDENTIALITY
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

David W. Brown, *Arbitrators: Impartiality and English Law: Did Rix J. Really get it Wrong in Laker Airways?*, 18 J. INT'L ARB. 121 (2001).
Brown debates the issue of whether a conflict of interest exists when an arbitrator is from the same chambers as the lawyer for one of the parties in arbitration. The Article deals with the question of whether British courts should continue to apply their current objective standard of impartiality, or adopt a more liberal approach that favors the moving party.
{92} SUBJ MATTER: INT'L
{138} ETHICS: GENERAL

Derek E. Brown, Comment, *"A Land of Strangers": Communitarianism and the Rejuvenation of Inter Mediate Associations*, 28 PEPP. L. REV. 941 (2001).
Brown discusses how "intermediate organization" serves as a buffer between the government and the family. The U.S. Supreme Court's decision in Boy Scouts of *America v. Dale* is cited as an important case affirming the independence of intermediate organizations. Brown suggests that American culture has been weakened by the judiciary acknowledging diversity, yet imposing "majoritarian uniformity."
{125} COMPARISONS: HISTORICAL
{78} SUBJ MATTER: COMMUNITY

R.J. Buchanan & I.M. Neil, *Industrial Law and the Constitution in the New Century: an Historical Review of the Industrial Power*, 20 AUSTRALIAN B. REV. 256 (2001).
This Article follows the history of the Australian constitutional powers of conciliation and arbitration from their beginnings in 1891. The idea that the Parliament should have the power to legislate to establish a federal tribunal to settle industrial disputes was first mentioned in the Conciliation and Arbitration Act of 1904. Contrary to the original purpose of the power, the Author finds that it remains somewhat inflexible and an artificial source of power for industrial regulation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{87} SUBJ MATTER: GOV'T
{128} REQUIREMENTS: STATUTORY OR RULES

Robert P. Burns, *Some Ethical Issues Surrounding Mediation*, 70 FORDHAM L. REV. 691 (2001).
This Essay first describes the issues of truthfulness and the appropriate division of authority between lawyer and client, which the Author states are the two most important ethical issues surrounding mediation in which lawyers participate. Then the Essay considers "transformative mediation," whereby the lawyer is changed from a hired gun into a "problem solver" whose role is unlike the lawyer-client model to which Americans are accustomed.
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Ted Burton, *An Ethical Obligation to Mediate—When?*, ADVOC., Nov. 1, 2001, at 9.
This Article discusses the nationwide trend toward court-initiated mediation. The Author believes that the timing for when an attorney should recommend mediation to the client is controlled by consideration of the needs of the client, by ethical rules, and by practicality. The Author encourages attorneys to let their clients know that mediation exists, make sure the client understands the advantages and the disadvantages of mediation, and educate the client as to their rights in the mediation process.
{21} MED: RELATED PROCESSES—GENERAL
{138} ETHICS: GENERAL
{133} COURT REFORMS

Jeremiah A. Byrne, Note, *"Another Day" Has Come and Gone:* Circuit City Stores, Inc. v. Adams, *Application of the Federal Arbitration Act to Employment Disputes*, 40 BRANDEIS L.J. 163 (2001).
This Article examines the U.S. Supreme Court's jurisprudence relating to the application of the Federal Arbitration Act to employment contracts. This examination culminates with an analysis of the Court's decision in *Circuit City Stores, Inc. v. Adams*. While the Author agrees with the Court's interpretation of the Act, he is critical of the Court's refusal to directly preempt the states from later attempting to limit the ability of employers and their employees to enter into arbitration agreements. Nonetheless, the Author believes that the Court's decision by implication preempts state antiarbitration statutes that prohibit arbitration of employment disputes.
{93} SUBJ MATTER: LABOR—GENERAL

John Caher, *Fee Arbitration Plans Delayed Until January*, N.Y. L.J., May 24, 2001, at 1.
A mandatory fee arbitration initiative in New York State was delayed until 2002 to allow it to be more firmly established and to allow for the recruiting and training of arbitrators and mediators. This program, supported by local bar groups, will move fee disputes to arbitration, which should be faster and more efficient. The program will include civil disputes involving over $1000 and less than $50,000, including matrimonial issues. Attorneys must inform their clients of the program, who may then choose to participate.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR

John Caher, *Telecom Case Review by U.S. Court Upheld; PSC Waived Immunity by Role as Arbitrator*, N.Y. L.J., Mar. 9, 2001, at 1.
This Article looks at the decision of Judge Kahn of the U.S. Court of Appeals for the Second Circuit in *MCI Telecommunications Corp. v. New York Telephone Co.*, along with the Telecommunications Act of 1996. Several other courts have ruled in the same way, holding that the state waived its sovereign immunity by participating in the Act's arbitration. The Article also looks at the impact of the U.S. Supreme Court's holding in *College Savings Bank v. Florida Post Secondary Educational Expense Board.*
{133} COURT REFORMS
{144} LEGISLATION
{87} SUBJ MATTER: GOV'T

John Caher, *Employees, Unbound*, CORP. COUNS., Nov. 1, 2001, at 25.
This Article uses the facts from a recent court holding to answer and to provide insight into the question of when a court can throw out an employer's arbitration agreement. This Article uses the words of David Hurd, a U.S. District Judge in Albany, New York, to answer that courts will throw such agreements out when an employee can show that suing the boss in court is cheaper than arbitrating the dispute.
{81} SUBJ MATTER: CORPORATE
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

John Caher, *State To Handle Labor Disputes Over Police: Role of City Collective Bargaining Board is Limited*, N.Y. L.J., Apr. 17, 2001, at 1.
The Article reviews the implications of an Albany, New York judge upholding the constitutionality of Chapter 641 of the Laws of 1998. As a result of the holding, jurisdiction for nearly all labor disputes involving New York City's police and firefighter unions would reside with the state's Public

Employment Relations Board. This dispute is rooted in both the Taylor Law and Chapter 641.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{87} SUBJ MATTER: GOV'T

John Caher, *Likely Higher Cost Voids Arbitration Pact: Judicial Forum Found Less Expensive for Plaintiff*, N.Y. L.J., Sept. 5, 2001, at 1.
This Article explores the *Ball v. SFX Broadcasting* decision holding that a party could avoid arbitration if he or she could demonstrate that litigation would be cheaper. The court did not force arbitration on the grounds that it was unfair because of the cost. Most courts take a contrary approach to forced arbitration and look to the financial status of the litigant rather than comparing the costs of litigation and arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

John Caher, *Arbitration Required for Most Fee Disputes*, N.Y. L.J., Jan. 29, 2001, at 1.
This Article discusses an announcement by Chief Administrative Judge Jonathon Lippman of a new arbitration program designed to settle disputes over attorney fees. The program, which is mandatory for attorneys but voluntary for clients, applies to all attorney-client relationships after June 1, 2001 (the effective date for the program) and replaces New York's matrimonial fee dispute program.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

James Cameron & Kevin R. Gray, *Principles of International Law in the WTO Dispute Settlement Body*, 50 INT'L & COMP. L.Q. 248 (2001).
This Article examines how the Dispute Settlement Body implemented according to the World Trade Organization (WTO) Agreement have interpreted laws (primarily applying effectiveness, in dubio mitius, and legitimate expectations, in addition to the Vienna Convention on the Law of Treaties), operated the WTO dispute settlement system (the role of GATT, burdens of proof, and judicial economy), and applied general principles of law (state responsibility, estoppel, abuse of rights, and exhaustion of local remedies).
{92} SUBJ MATTER: INT'L

Wesley Cann, *Creating Standards of Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance Between Sovereignty and Multilateral*, 26 YALE J. INT'L L. 413 (2001).

Article XXI of the General Agreements on Tariffs and Trade (GATT) was designed to create a security exception to which a contracting party can escape its obligation and take any action it considers necessary for the protection of its essential security. The Article examines the socio-economic consequences from unfettered use of security-based sanctions, ways to prevent improper application, and mechanisms to increase multilateral accountability.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T
{124} COMPARISONS: CROSS-CULTURAL

S. Benton Cantey, *International Arbitration To Resolve Disputes Under NAFTA Chapter 11: Investment*, 8 TULSA J. COMP. & INT'L L. 285 (2001).
The Author's goal is to provide investors with a clear understanding of the core provisions of Chapter 11. Additionally, he conveys the rules of international arbitration under NAFTA, as well as provides the investor with insight as to the practical workings of this procedure from the few cases that have arbitrated under Chapter 11. He concludes with an overview of the pertinent NAFTA provisions for future potential investors and some crucial factors for investors to consider before investing under NAFTA.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Judith V. Caprez & Micki A. Armstrong, *A Study of Domestic Mediation Outcomes with Indigent Parents*, 39 FAM. CT. REV. 415 (2001).
In an effort to determine the effectiveness of mediation programs for indigent parties in custody disputes, the Authors conducted a study of twenty-nine mediated disputes between such parties in Kansas from 1998 to 1999. The results of this study are presented in this Article, with the conclusion that mediation serves indigent parents as well as it serves the "nonindigent." The Article concludes with a recommendation that states should implement such programs for these families.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES—GENERAL

Tom Carter, *Collaborative Family Law*, 25 CANADIAN LAW. 10 (2001).
This Article describes the practice of collaborative law in the context of mediation. Collaborative law allows for attorneys who specialize in mediation to mediate, and for trial lawyers to litigate on the same issue if necessary. This is because the mediator withdraws if no settlement can be reached and the case must be litigated. The collaborative attorney will use

any mediation technique available to bring about a resolution of the conflict at hand.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Edward C. Chaisson, *The "Neutral" in Alternative Dispute Resolution*, 59 ADVOC. 267 (2001).
This Article, published by the Vancouver Bar Association, discusses how the use of the American term "neutral" is misleading when used to describe Canadian arbitrators and mediators. The Article includes a short comparison of the American Arbitration Association rules and the way the Canadian system is arranged, following the United Nations' Model Law on International Commercial Arbitration. Although Canadian arbitrators are to be impartial, there is no legal requirement for neutrality.
{74} SUBJ MATTER: GENERAL
{124} COMPARISONS: CROSS-CULTURAL

Sherwin Chen, Note, *Negotiating a Policy of Prudent Science and Proactive Law in the Brave New World of Genetic Information,* 53 HASTINGS L.J. 243 (2001).
The Note discusses the legal issues revolving around the scientific world of genetics. The Note examines the legal and social concerns arising from the current development, research, and deployment of genetic information technologies (GITs). These GITs supply the world with information regarding the genetic make-up of humans. First the Author discusses the general treatment of GITs and the law. Next, the Author develops the policy concerns of genetic research. Lastly, the Author outlines a paradigm of enhanced discussion, education, and law that must eventually contribute to increased democratic lawmaking in the fields of genetic research and technology development.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{138} ETHICS: GENERAL

P.R. Chenoweth, *Digest of* State of New Jersey, Dept. of Corrections v. Int'l Federation of Professional and Technical Engineers, Local 195, 165 BUS. LAW. 49 (2001).
This is a digest from a recent New Jersey Supreme Court decision holding that the state's presumption of "no work, no pay" was an antiquated idea. This holding came out of a case where arbitrators awarded back pay to union members who were, contrary to contractual provisions, denied priority status for overtime work. The court noted that although the union members did not physically work the overtime, the back pay awarded by arbitrators was

proper in that (1) it afforded a remedy for a wrong committed and (2) preserved arbitration rights so important to the interests of industrial workers.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{102} SUBJ MATTER: PUBLIC POLICY

P.R. Chenoweth, *Employment—Arbitration—Securities—Whistleblowers*, N.J. L.J., Feb. 26, 2001, at 83.
The financial analyst plaintiff suing for wrongful discharge, in violation of the Conscientious Worker Protection Act (CEPA), was compelled into mandatory arbitration of his claims. Plaintiff had signed an agreement to arbitrate as part of NASD registration. Though the NASD arbitration clause included an exception to mandatory arbitration for discrimination claims, the New Jersey Superior Court, appellate division, held that CEPA was not derived from any federal discrimination statute, but was a codification of common law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{127} REQUIREMENTS: MANDATE TO USE

P.R. Chenoweth, *Civil Practice—Arbitration—Discrimination—Employment—Torts*, N.J. L.J., June 18, 2001, at 1.
This Article summarizes the New Jersey Supreme Court's decision in *Garfinkel v. Morristown Obstetrics and Gynecology Associates*. The court, per Justice Verneiro, held that a waiver of traditional rights to litigation could not be "based on a vaguely worded clause." In Garfinkel, the court found that the arbitration clause language was so vague as to be an insufficient waiver of the aggrieved party's statutory right to bring suit.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{93} SUBJ MATTER: LABOR—GENERAL

Remigius Oraeki Chibueze, *The Adoption and Application of the Model Law in Canada: Post-Arbitration Challenge*, 18 J. INT'L ARB. 191 (2001).
This Article examines the adoption and application of the Model Law in Canada. The Model Law is limited to international commercial arbitration laws. The Author points out the inconsistencies between the substantive provisions of the Model Law and the grounds for challenging the recognition of arbitration awards. The Article explains that the Model Law is divided into two parts, procedural provisions and enforcement provisions. The Author concludes that the Model Law is a sample piece of legislation, which should be adopted with some necessary modifications.
{124} COMPARISONS: CROSS-CULTURAL

{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION

Paul Clark, *Restorative Justice and ADR: Opportunities and Challenges*, ADVOC., Nov. 1, 2001, at 13.
This Article discusses how the restorative justice and the mutual gain or interest-based models of conflict resolution (*e.g.*, mediation) are gaining ground in our society. The Author believes that, coupled with interest-based mediation, restorative justice has the potential to resolve the conflict created by criminal behavior, rather than simply punishing the wrongdoer or neglecting the victim. The Article describes the roots of restorative justice and the values it can add to the alternative dispute resolution professionals.
{21} MED: RELATED PROCESSES—GENERAL
{82} SUBJ MATTER: CRIMINAL

Sara Cobb, *Creating Sacred Space: Toward a Second-Generation Dispute Resolution Practice*, 28 FORDHAM URB. L.J. 1017 (2001).
In this Article, the Author provides a new vocabulary for describing the pragmatics of moral discussion, as well as a prescription for alternative dispute resolution (ADR) practice that reinstates moral discussion as central to conflict resolution processes. The Author advocates a "second-generation" mediation practice in which mediators interact with disputants so as to evolve the conflict stories, reformulate relationships, reframe the past, and rebuild the future. The Author defines ADR as a "sacred" practice, which calls attention to the practice's transformative capacity.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Robert F. Cochran Jr., *Professional Rules and ADR: Control of Alternative Dispute Resolution Under the ABA Ethics 2000 Commission Proposal and Other Professional Responsibility Standards*, 28 FORDHAM URB. L.J. 895 (2001).
The Author argues that lawyers should be required by the rules governing the legal profession to propose alternative dispute resolution options to clients. The Author states a number of reasons why the decision to pursue alternative dispute resolution (ADR) should be made by the client and also discusses whether the decision to pursue ADR is the client's or the lawyer's under the Model Code and the Model Rules of Professional Responsibility. Proposed changes to the existing rules governing the legal profession concerning the decision to pursue ADR are suggested and discussed.
{151} ROLE OF LAWYERS
{133} COURT REFORMS

Susan M. Cochrane, *Early Diversion to ADR: Improving Outcomes in Family Court*, 58 BENCH & B. MINN. 46 (2001).
Lengthy bitter family court litigation damages children and families. Minnesota law requires attorneys to inform their clients about alternative dispute resolution (ADR) and the court to educate parties about the impact of litigation upon families as soon as possible after the case is filed. Although early ADR is likely to mitigate the damage done to families during marriage dissolution, litigation remains the primary means of settling marriage dissolution disputes. The two main reasons we should divert cases before the temporary hearing are that litigation is highly adversarial and expensive and that temporary decisions carry a great deal of weight throughout the rest of the case.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Ruth Bryna Cohen, *Court: 'Ambiguous, Contradictory' Arbitration Clause Unenforceable*, 24 PA. L. WKLY. 35 (2001).
The Philadelphia Court of Common Pleas found that an arbitration provision in a Prudential auto insurance policy was ambiguous, and ambiguous provisions of an insurance policy are to be construed against the insurer. An injured undercover police officer attempted to recover damages from the officer's insurance policy. When coverage was denied, the officer requested arbitration. Prudential refused to arbitrate, citing policy limitations on arbitration. The court found the limitation provisions conflicted, and granted officers a motion to compel arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{127} REQUIREMENTS: MANDATE TO USE

Jonathan Cohen, *When People Are the Means: Negotiating with Respect*, 14 GEO. J. LEGAL ETHICS 739 (2001).
In this Article, the Author argues for an ethics orientation within negotiation ethics. The Author describes, what he calls, the object-subject tension and how one reconciles the fact that the other party is a potential means to one's end with the general ethical requirements of treating people. He argues there is a general moral duty to respect other people, a duty that is not overridden by negotiation. He examines the nature of this duty and its implications.
{138} ETHICS: GENERAL

Sarah Rudolph Cole, *Uniform Arbitration "One Size Fits All" Does Not Fit*, 16 OHIO ST. J. ON DISP. RESOL. 759 (2001).
This Article emphasizes the differences between traditional and modern arbitration and concludes that different types of procedural protections are necessary. The traditional, commercial arbitration process is hindered by the application of due process protections invoked to alleviate the problems resulting from unequal bargaining power in the consumer and employee arbitration context. The Author concludes that separate arbitration reforms should be considered for situations where one party is a one-time player and for situations where both parties are repeat players.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS
{147} POWER IMBALANCE

Andrew Coleman, *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, 75 L. INST. J. 27 (2001).
Coleman reviews this book that deals with the political organization of multi-ethnic states through a collection of eleven case studies. These studies examine the role of federalism in resolving multi-ethnic conflicts in various nations. The studies, according to Coleman, tend to show that granting differing rights to one region under federalism is probably the best model for multi-ethnic nation states, although some of the studies reveal its potentially destructive effects on such states.
{124} COMPARISONS: CROSS-CULTURAL
{92} SUBJ MATTER: INT'L

Andrew E. Colsky, *Delivering Transformative Mediation to Every Zip Code*, 52 LAB. L.J. 185 (2001).
This Article discusses the use of transformative mediation through an examination of the U.S. Postal Service's Resolve Employment Disputes Reach Equitable Solution Swiftly (REDRESS) program. Specifically, transformative mediation attempts to make the parties feel comfortable expressing themselves and permits the parties to gain an understanding of the reasons for others' actions. The primary benefit of transformative mediation is that, by participating in the program, the parties develop the tools needed to prevent or otherwise resolve disputes that arise in later situations. In supporting the use of transformative mediation, the Authors cite studies of the REDRESS program that show an over ninety percent satisfaction rate with the process.
{21} MED: RELATED PROCESSES—GENERAL

Alexander J.S. Colvin, *The Relationship Between Employment Arbitration and Workplace Dispute Resolution Procedures*, 16 OHIO ST. J. ON DISP. RESOL. 643 (2001).
This Article evaluates arbitration as a part of a multi-step process discussing the feasibility of arbitration serving as a review for workplace procedures. The Author argues that the workplace procedures provided avenues for early settlement and provided flexibility in reviewing situations but may be limited in their ability to resolve legal claims. The Author concludes that arbitration as a review could potentially help ensure fairness in the workplace procedures.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{21} MED: RELATED PROCESSES—GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{145} OMBUDSPERSON

R.J. Comer, *Navigating the Negotiation of Streambed Alteration Agreements*, LOS ANGELES LAW., Jan. 1, 2002, at 13.
This Article discusses the rather rare process of negotiating a Streambed Alteration Agreement (SAA) and suggests many helpful strategies for dealing with government agencies; including a discussion about arbitration and the roles developers, government agencies, and other parties may play. The section involving suggestions on how to structure arbitration is especially helpful.
{84} SUBJ MATTER: ENVIRONMENT

Monique Conrod, *Automated ADR*, 25 CANADIAN LAW. 10 (2001).
Online methods of dispute resolution are growing. The Author discusses various different types of internet-based dispute resolution projects, including those that mediate consumer purchases and insurance claims. Online dispute resolution carries many of the benefits of traditional alternative dispute resolution, such as cost effectiveness, and combines with it the ability to mediate or arbitrate between people separated by geography or language. The unique challenges of being an online mediator are also discussed.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{79} SUBJ MATTER: CONSUMER
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Peter Contuzzi, *Should Parties Tell Mediators Their Bottom Line?*, A.B.A. GP SOLO & SMALL FIRM LAW., Mar. 2001, at 48.
The Author offers a practical technique that he, as a mediator, employs to reach a monetary settlement in negotiations that are headed for stalemate. The Author explains his step by step "Safety Deposit Box" technique of

gathering each party's bottom line and preparing a proposal from those figures to assist the parties in reaching an agreement. The primary focus of this technique is to maintain control over each party's information to ensure confidentiality and to preserve confidence in the negotiation process.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE
{132} CONFIDENTIALITY

David R. Cordell, *ADR in Employment Litigation*, 36 TULSA L.J. 853 (2001).
Alternative dispute resolution (ADR) is an important aspect of employment dispute resolution. This Article discusses why, even if the dispute reaches the courthouse, ADR should be used as an effective tool in the process by both plaintiff and defense lawyers. The Article also discusses the unique characteristics and ethical issues of employment cases and how these factors may interact with ADR.
{93} SUBJ MATTER: LABOR—GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Neil Coulson, *United Kingdom: The New Nominet Dispute Resolution Procedure*, TRADEMARK WORLD, Nov. 1, 2001, at 14.
This Article is a brief review of the new dispute resolution procedure for domain names that include the ".uk" country code top level domain. This Article discusses how this new policy may affect trademark owners. In summary, the new policy brings the Nominet dispute resolution policy closer to the Internet Corporation for Assigned Names and Numbers (ICANN) policy, although there are important differences of which trademark owners should be aware (including the introduction of an informal mediation process before the complaint is referred to an expert for final adjudication).
{21} MED: RELATED PROCESSES—GENERAL

Marcia Coyle, *Arbitration Heaven Looms for Business: Three High Court Rulings Give Business Upper Hand in ADRs*, N.J. L.J., Apr. 2, 2001, at 26.
Three recent U.S. Supreme Court decisions upheld employment arbitration agreements, thus, creating a safe haven for employers that wish to avoid litigation. In *Circuit City Stores, Inc. v. Adams*, the Court held that the employee was subject to the Federal Arbitration Agreement (FAA) because the exclusion provision of the FAA only applied to transportation workers. Nine months later, the Court held that silence on the cost of arbitration is not enough to invalidate arbitration agreements in consumer contracts.
{79} SUBJ MATTER: CONSUMER
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Charles B. Craver, *The Use of Non-Judicial Procedures To Resolve Employment Discrimination Claims*, 11 KAN. J.L. & PUB. POL'Y 141 (2001).
This Article discusses non-judicial dispute resolution procedures that could be applied to employment discrimination cases. First, Equal Employment Opportunity Commission (EEOC) personnel should provide claimants with definitive information on the merits of discrimination allegations in addition to settlement encouragement and assistance. Second, when voluntary settlement is not reached, binding arbitration, where unanswered procedural questions exist, becomes necessary. Third, when arbitration is not available, the EEOC could resolve claims through administrative adjudications.
{94} SUBJ MATTER: LABOR—DISCRIMINATION

John A. Criswell, *The "Mandatory" Arbitration of Employees' Statutory Claims*, COLO. LAW., Nov. 1, 2001, at 71.
This Article discusses a number of recent federal cases pertaining to the enforceability of mandatory arbitration of disputes arising between employers and employees asserting violations of federal statutory rights, including discussion of *Gilmer v. Interstate/Johnson Lane Corp.*, *Cole v. Burns International Security Services*, and *Green Tree Financial Corporation-Alabama v. Randolph.* It discusses the circumstances where courts have permitted employers to compel the use of arbitration to resolve their employees' federal statutory claims against them.
{81} SUBJ MATTER: CORPORATE
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Caroline Crowne, Note, *The Alternative Dispute Resolution Act of 1998: Implementing a New paradigm of Justice*, 76 N.Y.U. L. REV. 1768 (2001).
The Alternative Dispute Resolution Act of 1998 requires federal district courts to implement alternative dispute resolution (ADR) programs. However, the creation of such programs will only be successful if courts acknowledge and address the differences between ADR and adjudication. By doing so, federal district courts can create successful ADR programs without compromising justice.
{133} COURT REFORMS

Nathan Crystal, *The Incompleteness of the Model Rules and the Development of Professional Standards*, 52 MERCER L. REV. 839 (2001).
The Author asserts that the professional standards movement can be understood by focusing on characteristics of the Model Rules of Professional Conduct. In addition, he discusses how the limitations of the Model Rules would best apply to the range of standards other organizations produce. Crystal considers the evaluation of the various standards and contends they

should be consistent with the Model Rules, should provide detailed supplementation rather than repetition of Model rules, and the drafters should develop an action plan to make voluntary standards influential.
{138} ETHICS: GENERAL

Duncan Curley, *Cybersquatters Evicted? Protecting Names Under the UDRP*, 12 ENT. L. REV. 91 (2001).
This Article describes that the dispute resolution procedures administered by the Internet Corporation for Assigned Names and Numbers (ICANN) have been embraced by rights holders as providing quick, inexpensive, and effective weapons in the war against cybersquatters. The Article outlines the dispute resolution procedure available for most types of disputes concerning generic top-level domains. The Article also provides brief summaries of several recent domain name disputes (*i.e.*, madonna.com, barcelona.com).
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

Kenneth Curtin, *Contractual Expansion & Limitation of Judicial Review of Arbitral Awards*, 56 DISP. RESOL. J. 79 (2001).
This Article discusses the recent attempt by parties in the U.S. to expand or contract judicial review of arbitral awards by contracting outside the arbitral agreement. Different circuits in the U.S. have allowed or denied such contracts. However, the decisions of U.S. courts could face problems in international fora. Foreign and international court systems may treat the right to contract differently on judicial review. Therefore, parties should only be allowed to contract for the procedural aspects of arbitration, not judicial review.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Robert Dahlquist, *Making Sense of Superfund Allocation Decisions: The Rough Justice of Negotiated and Litigated Allocations*, ENVTL. LAW. REP., Sept. 1, 2001, at 11098.
In discussing the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund), this Article examines the factors that are used in the allocation of liability among responsible parties in environmental clean-up cost disputes. It looks at the factors used by courts in litigated disputes and those utilized by the parties themselves in negotiated settlements. The Author posits that courts generally focus on the conduct of each party while, in the settlement context, the parties tend to focus primarily

on waste volume or mass. The Article also contends that CERCLA provides no real guidelines to parties who become part of these disputes.
{84} SUBJ MATTER: ENVIRONMENT

Joseph Daly, *International Commercial Negotiation and Arbitration*, 22 HAMLINE J. PUB. L. & POL'Y 217 (2001).
With the growth of global markets, even the small business owner faces a possibility of transacting business internationally. It is therefore necessary for all lawyers to understand commercial negotiation and arbitration on both national and international levels. This Article discusses negotiation necessities, stages of negotiation, transactional and cross-cultural negotiations, and arbitration of international disputes.
{76} SUBJ MATTER: COMMERCIAL
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Charles Davant, *Tripping on the Threshold: Federal Courts' Failure to Observe Controlling State Law Under the Federal Arbitration Act*, 51 DUKE L.J. 521 (2001).
This Article discusses the overall failure of federal courts to consider state law contract laws when determining the existence of arbitration agreements. The Article argues that the Federal Arbitration Act of 1925 was meant to be procedural only, however the U.S. Supreme Court has not led the way in letting lower federal courts know that state contract law should be the applicable law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

William J. Davey, *Has the WTO Dispute Resolution Settlement System Exceeded Its Authority?*, 4 J. INT'L ECON. L. 79 (2001).
The Author addresses the concern that the World Trade Organization's (WTO) Dispute Settlement System threatens national sovereignty and policies, examines the organization's handling of numerous cases and issues, and determines that deference has largely been granted to national governments and their individual policy determinations. The Author further concludes that where the WTO may have an intrusive effect, it should adopt certain "issue-avoidance" techniques to avoid deciding cases that may seem unnecessary or inappropriate.
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY

Todd R. David & Jessica L. Perry, *Effective Use of Mediation by Trial Lawyers*, 24 TRIAL LAW. 297 (2001).
The Author of this Article points out the need for trial lawyers to shift their attitudes and styles when participating as an advocate in a mediation. Equally as important in a civil mediation is the advocate's persuasiveness and preparation. A cross-section of mediation professionals were asked a series of important questions about the keys to effective preparation and performance in mediation. Some of these questions include: when is the time right to mediate, and do lawyers need special training to succeed in mediation?
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Gwynn Davis et al., *Mediation and Legal Services—the Client Speaks*, 31 FAM. L. 110 (2001).
This Article summarizes a study performed by the Legal Services Commission. This study examined the the volume of mediation activity, the mediation case load, attitudes of negotiation, the experiences of mediation, and the experience of solicitors. The Article concludes that mediation will never entirely replace lawyers, but it can still provide a valuable service to some couples.
{21} MED: RELATED PROCESSES—GENERAL

Minh Day, Note, *Alternative Dispute Resolution and Customary Law: Resolving Property Disputes in Post-Conflict Nations, a Case Study of Rwanda*, 16 GEO. IMMIGR. L.J. 235 (2001).
The Author describes the nature of property disputes in Rwanda as a result of the millions of refugees who have fled to Central Africa's Great Lakes Region. Day argues that a hybrid between alternative dispute resolution (ADR) and the customary law model is best suited to resolve the countless property disputes between returnees and second-occupiers in Rwanda. This Note discusses the compatibility of customary law of Africa and the use of ADR.
{92} SUBJ MATTER: INT'L

Nadia de Araujo, *Dispute Resolution in MERCOSUL: The Protocol of Las Lenas and the Case Law of the Brazilian Supreme Court*, 32 U. MIAMI INTER-AM. L. REV. 25 (2001).
Unlike the European Union, the MERCOSUL decided not to adopt a supranational institution to resolve disputes arising under community law. Instead, MERCOSUL provides three dispute resolution mechanisms: consultation with MERCOSUL's Trade Commission, litigation in the courts

of member states, and arbitration through private agreement. While the Author criticizes the uncertainty and forum shopping opportunities that the lack of a supernational institution creates, empirical evidence suggests that the Trade Commission has proven to be an effective option.
{124} COMPARISONS: CROSS-CULTURAL

Ellen E. Deason, *The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?*, 85 MARQ. L. REV. 79 (2001).
The Author proposes that, through the adoption of the Uniform Mediation Act (UMA), the states would greatly advance the desired goal of predictability in the mediation context. The Author resolves that the UMA provides the proper approach for creating uniformity and maintaining confidentiality in mediation.
{21} MED: RELATED PROCESSES—GENERAL
{132} CONFIDENTIALITY

Ellen E. Deason, *Enforcing Mediated Settlement Agreements: Contract Law Collides with Confidentiality*, 35 U.C. DAVIS L. REV. 33 (2001).
This Article discusses the conflict between the law of contracts and the confidentiality requirements of mediation. It discusses the potential threats that exist in contract law to confidentiality in the context of enforcing mediated settlement agreements. It also discusses decisions by a number of state courts holding that principles of state contract law preempt statutory confidentiality protections for mediated settlements. It stresses the importance of preserving the confidentiality of the statements of parties during mediation.
{132} CONFIDENTIALITY
{21} MED: RELATED PROCESSES—GENERAL

Michael Delikat & Rene Kathawal, *Enforcing Pre-Dispute Arbitration Agreements*, N.Y. L.J., Apr. 30, 2001, at 1.
This Article introduces and discusses several decisions of the U.S. Court of Appeals for the Second Circuit regarding pre-dispute arbitration agreements. The Author utilizes these cases, coupled with the U.S. Supreme Court's *Circuit City Stores, Inc. v. Adams* holding, to attest to the continued vitality of arbitration as a judicially recognized, viable alternative dispute resolution mechanism in the Second Circuit.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{93} SUBJ MATTER: LABOR—GENERAL

Axel Desmedt, *Proportionality in WTO Law*, 4 J. INT'L. ECON. L. 441 (2001).
This Article discusses the importance of the principle of proportionality in European law and examines the status of the principle in the context of the World Trade Organization (WTO). This Article looks at three different areas of WTO law where proportionality requirements have been explored: countermeasures, TBT and SPS agreements, and Article XX of GATT. Proportionality, the Author suggests, has not been adopted as an unwritten principle of WTO law. Instead, the existence of proportionality requirements depends on the language of a particular provision.
{92} SUBJ MATTER: INT'L

Francois Dessemontet, *Conflict of Laws for Intellectual Property in Cyberspace*, 18 J. INT'L ARB. 487 (2001).
This Article discusses the current need for a restatement of the rules of conflict in Intellectual Property (IP) law because international conventions on IP do not adequately deal with issues of "territoriality." While cyberspace is not part of one "territory," the courts try to adopt IP law on the national level. Therefore, a restatement would help provide a more uniform administration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{124} COMPARISONS: CROSS-CULTURAL

Carleen Devine, *Is Environmental Mediation on the Way Up or the Way Out*, L. SOC'Y J., June 1, 2001, at 72.
Over one hundred delegates met at the Law Society's Planning and Environmental Dispute Management Conference in Australia to discuss a comprehensive dispute management approach and lend support to political leaders. Clearly defining the process, managing it well, promoting understanding for dispute resolution at political, administrative, and community levels, and a culture of participation are essential for success of an environmental dispute resolution program in Australia.
{21} MED: RELATED PROCESSES—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Lucien J. Dhooge, *The North American Free Trade Agreement and the Environment: The Lessons of* Metalclad Corp. v. United Mexican States, 10 MINN. J. GLOBAL TRADE 209 (2001).
This Article analyzes the arbitration of a claim by Metalclad that its investment in a landfill had been expropriated by Mexican authorities in violation of NAFTA. While feeling that the tribunal reached the right result on the merits, the Author agrees with the concerns of environmentalists that

this ruling may have a chilling effect on the adoption of new environmental laws, especially those which may interfere with existing foreign investments. In conclusion, the Author also examines a number of methods to limit the investor-state provisions of NAFTA to prevent this chilling effect.
{92} SUBJ MATTER: INT'L

Luis Miguel Diaz, *Mediation Year 2051?*, 56 DISP. RESOL. J. 24 (2001).
This is a fictional/speculative Article set in the year 2051 and all courts have been replaced by software that acts as a perfect mediator for all disputes. The software can facilitate mediation over the Internet after receiving the proper input from the parties involved.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Anne H. Dick & Ewan A. Malcolm, *Let Mediation Take the Strain*, 46 J.L. SOC'Y SCOT. 24 (2001).
This Article looks at how mediation processes are helping to make family law in Scotland a more positive experience for the parties involved. Specifically, the Article highlights how mediation allows parties to be more active participants in the resolution of disputes central to their lives. The Article concludes by giving practical information about the country's family law mediation program, as well as detailed guidelines on the typical subject matter and length of these mediation procedures.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{92} SUBJ MATTER: INT'L

Robert Dingwall & David Greatbatch, *Family Mediators—What Are They Doing?*, 31 FAM. L. 378 (2001).
The Authors discuss the results of a case-study of family mediations to determine the level of compliance with the Family Law Act of 1996, which implemented divorce mediation. General observations concerning divorce mediation, as well as specific areas of the established "Code of Practice" are examined to determine the levels of mediator compliance with the code and general mediator practices.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{149} QUALITY CONTROL
{144} LEGISLATION

David D. Dodge, *Unsettling Negotiations: Remember Your Client When Conveying Offers*, 37 ARIZ. ATT'Y 10 (2001).
The Author examines the Minnesota Supreme Court decision, *In re Panel*, and its implications for lawyers in negotiating settlements for clients. The

Minnesota Supreme Court held, in a case involving a lawyer's blatant disregard of his client's instruction to settle, that once a client makes it clear he or she wants to settle the case on specific terms, the lawyer must either abide by the client's wishes, persuade the client that settlement on those terms would be ill-advised, or withdraw.
{121} SETTLEMENT: AUTHORITY
{138} ETHICS: GENERAL

Karen A. Doi, Note, *America's Anti-Violence Campaign: The Use of Mediation To Reduce the Incidence of Workplace Violence*, 12 RISK 133 (2001).
In the past three years, roughly half of employers have experienced an incident of workplace violence. Such incidents may subject employers to liability either under negligence theories or through OSHA violations. In this Article, the Author suggests that employers may create a more productive, as well as safer, workplace environment by the implementation of a formal mediation program.
{93} SUBJ MATTER: LABOR—GENERAL
{21} MED: RELATED PROCESSES—GENERAL

Karyn A. Doi, Recent Development, Cortez Byrd Chips, Inc. v. John Harbert Construction Co., 16 OHIO ST. J. ON DISP. RESOL. 409 (2001).
The U.S. Supreme Court recently heard *Cortez Byrd Chips, Inc. v. John Harbert Construction Co.* to determine the proper application of the Federal Arbitration Act's venue provisions. Ambiguity in the statutory language had been creating conflict amongst the circuit courts. The Supreme Court determined that the Federal Arbitration Act's venue provisions should be viewed permissively in light of the legislative history and the liberal federal policy favoring arbitration.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

M. Scott Donahey, *A Proposal for an Appellate Panel for the Uniform Domain Name Dispute Resolution Policy*, 18 J. INT'L ARB. 131 (2001).
This Article concerns arbitration in the context of disputes over rights to domain names. Many scholars believe such a process needs appellate review to protect the parties. Other scholars see such a process as an unnecessary expense. The Author suggests that an appellate panel should be developed, and then details how such a panel should operate. The Author also points out the many benefits that could be achieved for all parties by the operation of such an appellate panel.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

David S. Doty, *Finding a Third Way: The Use of Public Engagement and ADR To Bring School Communities Together for the Safety of Gay Students*, 12 HASTINGS WOMEN'S L.J. 39 (2001).
In dealing with the needs of its gay students, school administrators must balance the legal rights of those students with the concerns expressed by some members of the community. Due to this inherent tension, many of these decisions eventually find their way into the judiciary. This Article, however, discusses the Modesto School District's utilization of ADR principles to reach consensus among all of these participants.
{83} SUBJ MATTER: EDUCATION

Trevor Drury, *Deputy Head of EU Delegation Hopes WTO Will Favor EU in ETI Disputes*, 22 TAX NOTES INT'L 1607 (2001).
This Article discusses contrasting views concerning the reasons for tax disputes between the United States (U.S.) and the European Union (E.U.) and the anticipated ruling from the World Trade Organization dispute panel in the extraterritorial income exclusion case. The deputy head of the E.U. Delegation to the U.S. believes settlement will not occur until the U.S. and E.U. values are in harmony with each other. However, the U.S. ambassador to the E.U. believes the U.S. has shown its commitment to improving relations with the E.U. by selecting negotiators to settle disputes.
{92} SUBJ MATTER: INT'L
{108} SUBJ MATTER: TAX

Michael Duckor, *10 Tips for Bonehead Mediation*, 21 CAL. LAW. 80 (2001).
Author discusses ten tips to ensure ineffective mediation. These ten tips include 1) Fail to Prepare, 2) Have no Strategy, 3) Keep it Real, 4) Don't Discuss Case with Your Clients, 5) Never Mention Costs, 6) Speak in Code, 7) Choose a Mediator by Astrology, 8) Joke around a lot, 9) Settle cases on Instinct, and 10) Cop an Attitude.
{138} ETHICS: GENERAL
{114} 3RD PARTY: PRACTICE OF LAW

Shannon P. Duffy, *Acquiring Corporation Not Bound by Arbitarion Agreement With Union*, N.J. L.J., Oct. 10, 2001, at 5.
The U.S. Court of Appeals for the Third Circuit decision in *AmeriSteel Corp. v. International Brotherhood of Teamsters*, ruled that Ameristeel, which acquired the assets of Brocker Rebar, could not be forced to arbitrate under its predecessor's collective bargaining agreement with the union. The

purchase agreement included express terms that stated that Ameristeel was not to be bound by the union agreement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Christopher Dugue, *Dispute Resolution in International Project Finance Transactions*, 24 FORDHAM INT'L L.J. 1064 (2001).
The Author discusses ways in which dispute resolution has been utilized in international project financing transactions, including the different types of dispute resolution mechanisms that have been employed in these types of transactions. The Author illustrates how arbitration and litigation have been employed as dispute resolution mechanisms in these types of cases, and describes how to effectively draft an arbitration clause for transactions of this type.
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Scott Duguild et al., *A Web-Based Decision Support System for Divorce Lawyers*, 15 INT'L REV. L. COMPUTERS & TECH. 265 (2001).
The Article describes the development and design of a prototype web-based program that will calculate financial provision awards for divorcing couples in Scotland. The Article describes how the program will primarily function to train new lawyers to understand the ins and outs of the matrimonial property and divorce laws while providing them with easy access to case law available on the web. The Article also explains that the program is intended to support lawyers in a way that focuses on advice, negotiation, and mediation, rather than in an adversarial nature, because Scottish divorce lawyers seek consensual negotiated settlements, rather than antagonist disputes.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES—GENERAL

Ian Dunn, *Solicitors, Mediations, and Arbitrations*, L. INST. J., Sept. 1, 2001, at 4 (2001).
Written by the CEO of the Law Institute, this column discusses agreements that require mediation, conciliation, or arbitration. In the absence of a provision in those agreements regarding the choice of a mediator, conciliator, or arbitrator, the president or chief executive of the Law Institute nominates a party. This column explores the success and significance of some of the

matters referred to the Law Institute for nomination and encourages readers to come to the Law Institute for assistance in appointing a mediator.
{92} SUBJ MATTER: INT'L
{151} ROLE OF LAWYERS

Jill Earshaw & Stephen Hardy, *Assessing an Arbitral Route for Unfair Dismissal*, 30 INDUS. L.J. 289 (2001).
This Article discusses changes made to the Employment Rights Dispute Resolution Act of April 1998. The act made significant changes to the arbitration of unfair dismissal claims. The Author critiques the changes and argues that strengthening the original system by various reforms would have been a preferable approach
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Katherine Eddy, Note, *To Remedy Every Wrong: the Confounding of Civil Liberties Through Mandatory Arbitration Clauses in Employment Contracts*, 52 HASTINGS L.J. 771 (2001).
This Note examines the differences between two cases involving employment contract arbitration clauses and the ability of a plaintiff to avoid arbitrating statutory discrimination claims. A recent California Court of Appeals decision to enforce an arbitration clause conflicted with U.S. Court of Appeals for the Ninth Circuit precedent and ignored claims of unconscionability in enforcing mandatory arbitration.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{127} REQUIREMENTS: MANDATE TO USE
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Bruce A. Edwards, *Check Your Ego at the Door*, 21 CAL. LAW. 25 (2001).
An attorney discusses life from San Francisco litigation to the mediation of a dispute in Washington D.C. The biggest asset in the world of mediation is the willingness of the mediator to understand that the proper management of ego is central to effective dispute resolution. It is the process of mediation and not the mediator that holds the power in dispute resolution.
{114} 3RD PARTY: PRACTICE OF LAW

Howard C. Emmerman, *The Ever-Increasing Influence of Mediation as a Means of Resolving Complex Commercial Disputes: Why Crenet/SPIDR Publications Have Replaced the Rules of Civil Procedure on My Bookshelf*, 50 DEPAUL L. REV. 1085 (2001).
In this Article, the Author provides three case studies that detail how the mediation process enabled parties to settle their disputes without expensive litigation. The Author asserts that mediation is no longer a novel concept.

Career litigators must recognize the benefits of mediation and develop new skills and a new approach to litigation.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Employers Must Pay First, Arbitrate Later, in Disputes Involving Multiemployer Pension Plans, 29 TAX MGM'T COMPENSATION PLAN. J. 216 (2001).
The Multi-Employer Pension Plan Amendments Act of 1980 establishes a "pay now, dispute later" scheme whereby an employer is required to make interim payments to a multiemployer pension fund if it withdraws from the multiemployer pension plan. This Article discusses a recent interpretation of the Act by the U.S. Court of Appeals for the Seventh Circuit disallowing employers engaged in labor dispute arbitration from deferring liability payments pending arbitration. Instead, the court held that employers must pay into the pension fund during the dispute and if the employers win the arbitration, they will get back whatever they paid.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION

Lynn A. Epstein, *Cyber E-mail Negotiation vs. Traditional Negotiation: Will Cyber Technology Supplant Traditional Means of Settling Litigation?*, 36 TULSA L.J. 839 (2001).
Electronic mail is widely used in the workplace. This Article discusses the advantages and disadvantages of e-mail negotiation versus traditional face-to-face negotiation. The Article also explores the ethical concerns that are inherent in e-mail negotiations. Lastly, the Article proposes guidelines for attorneys that are eager to utilize e-mail negotiations in practice.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{138} ETHICS: GENERAL

Joe Epstein, *Alternative Dispute Resolution: Effective Mediation for Employment Cases*, 19 PREVENTIVE L. REP. 29 (2001).
This Article claims that mediation, not arbitration, is or should be the favored form of ADR for employment discrimination disputes. The Author lists several reasons that mediation is preferred and advocates that in-house conflict management systems be developed to facilitate dispute resolution as early as possible so that opportunities for empowerment and recognition are created, costs are abated, and arbitration and/or trial do not become

necessary. Further, the Article guides attorneys thorough the mediation process in employment cases.
{21} MED: RELATED PROCESSES—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Samuel Estreicher et al., *Paying the Costs of Arbitration*, N.J. L.J., July 16, 2001, at 29.
Green Tree Financial Corp.-Alabama v. Randolph recognized that large arbitration costs might prevent litigants from resolving claims in arbitration, but did not affirmatively decide who should pay for the costs of arbitration. The Authors analyze recent case law on the issue to show the willingness of courts to enforce cost-splitting provisions among litigants when the provisions are reasonable and do not prevent the enforcement of a litigant's statutory rights to arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS

Samuel Estreicher, *Predispute Arbitration Agreements and Consumer Class Actions*, N.Y. L.J., July 12, 2001, at 3.
This Article analyzes two federal circuit cases to determine whether a plaintiff may contest the enforceability of arbitration when it may deprive the plaintiff of class action rights. The U.S. Supreme Court left open the issue in *Green Tree Financial Corp.-Alabama v. Randolph*, and the Author examines relevant case law to show the broad class action implications for plaintiffs, with a special concern for employees who might argue claims against their employers.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER

Samuel Estreicher, *Saturns for Rickshaws: The Stakes in the Debate over Predispute Employment Arbitration Agreements*, 16 OHIO ST. J. ON DISP. RESOL. 559 (2001).
Arbitration agreements must be fair in design to ensure against invalidation. Because the U.S. Supreme Court's decision in *Circuit City Stores, Inc. v. Adams* approved of extending the Federal Arbitration Act to all employment contracts, save those explicitly exempted in the statute, both employees and employers should work together to create a better arbitration system for resolving employment disputes.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Samual Estreicher & Kenneth J. Turnball, *Arbitration Provisions in Employment Contracts*, N.Y. L.J., Apr. 11, 2001, at 1.
The U.S. Supreme Court decision in *Circuit City Stores, Inc. v. Adams*, holding that the exclusion provision of the Federal Arbitration Act only applies to transportation workers, left many questions unanswered. Before long, the Court shall answer one of these many questions by reviewing *EEOC v. Waffle House*, addressing the issue of whether the binding arbitration clause of an employment contract prevents the Equal Employment Opportunity Commission (EEOC) from seeking relief on employees' behalf, and resolving a split between the U.S. Courts of Appeals for the Second, Fourth and the Sixth Circuits.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Samuel Estreicher & Kenneth J. Turnbull, *Pre-Dispute Employment Arbitration Agreements: Who Pays?*, N.Y. L.J., May 30, 2001, at 3.
Although employers can impose arbitration agreements on employees as a condition of employment, until recently employers were expected to cover hefty costs. Recent cases call for shared costs or loser pays all, unless the employee can prove the bill is so far beyond his or her means that it would preclude bringing an action. Employees are liable for fees as long as they are reasonable, which will be assessed case-by-case.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Samuel Estreicher & Kenneth J. Turnbull, *Varying the Standard of Judicial Review of Arbitration Awards*, N.Y. L.J., Aug. 8, 2001, at 3.
According to the Federal Arbitration Act (FAA) § 10, judges are only able to vacate arbitration awards in limited situations; however, as of late, parties to arbitration agreements have attempted to contract out of this standard by stating, for example, that a court may review the award for "errors of law." The U.S. courts of appeals are split on whether or not to enforce such provisions. This Article discusses how the U.S. Courts of Appeals for the Fifth, Ninth, and Tenth Circuits come out on the issue and offers the alternative of contracting for an appellate arbitral panel to review the initial award because it is an acceptable solution under the FAA and achieves the same result.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Gail E. Evans, *Comment on the Terms of Reference and Procedure for the Second WIPO Internet Domain Name Process*, 23 EUR. INTELL. PROP. REV. 61 (2001).
This Article considers issues that arise under the current system of Internet governance and the impact of the Internet Corporation for Assigned Names and Numbers (ICANN) dispute process on the intellectual property systems of nation states. The Author specifically posits that the process's legitimacy is questionable because of the lack of international consensus on trademark law, the fact that some decisions are better left to courts, and the lack of accountability in the ICANN-World Intellectual Property Organization (WIPO) rulemaking process.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{92} SUBJ MATTER: INT'L

Michelle R. Evans, Note, *Women and Mediation: Toward a Formulation of an Interdisciplinary Empirical Model to Determine Equity in Dispute Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 145 (2001).
A research model is proposed to evaluate disparate mediation bargaining power and test theories to remedy gender power differentials. Mediation and recent psychological, sociological, and gender studies are discussed. The Author then explores the purposes of mediation that are served through the determination of whether a disparity in bargaining power between the sexes exists. Finally, the Author suggests a modifiable research model based on psychology, sociology, and alternative dispute resolution.
{147} POWER IMBALANCE
{21} MED: RELATED PROCESSES—GENERAL

Bill Ezzell, Note, *Inside the Minds of America's Family Law Courts: The Psychology of Mediation Versus Litigation in Domestic Disputes*, 25 LAW & PSYCHOL. REV. 119 (2001).
In family law matters, it is important that the participants are sufficiently involved in, and satisfied with, the ultimate resolution of their case. In general, this Article posits that the use of mediation in family law is more likely to provide such psychological benefits. However, the Author feels that the traditional adversarial system is appropriate for child custody cases, where the emphasis on fact finding will likely produce the best outcome for the child's interests.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Hossam M. Fahmy, *Arbitration: Wiping Out Consumer's Rights?*, 64 TENN. B.J. 917 (2001).
The inclusion of arbitration clauses in consumer credit agreements is rapidly increasing. The effect on consumer rights is examined, along with the likely enforceability of arbitration provisions. In particular, an arbitration agreement implemented by American Express is examined, and the Author concludes that the clause favors the creditor. Reforms are suggested to alter power relationships unfavorable to consumers compelled to arbitrate disputes.
{79} SUBJ MATTER: CONSUMER
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Cristina Fahrback, *From* Gardner *to* Circuit City*: Mandatory Arbitration of Statutory Employment Disputes Continues*, 56 DISP. RES. J. 64 (2001).
This Article looks at the case law surrounding the debate over the lawfulness of mandatory predispute arbitration clauses for statutory employment disputes. It also looks at some of the players in these disputes, including the New York Stock Exchange, National Association of Securities Dealers, Equal Employment Opportunity Commission, as well as Due Process. The Article also discusses some concerns over *Circuit City Stores, Inc. v. Adams* and the differing views of what conditions are fair for enforcing these agreements.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{125} COMPARISONS: HISTORICAL
{128} REQUIREMENTS: STATUTORY OR RULES

Michael Fitz-James, *Mexican Misadventure*, CANADIAN LAW., Oct. 1, 2001, at 40 (2001).
This Article discusses a Canadian court review of an arbitration award under NAFTA Chapter 11's investor-state remedy. This will be the first ever such court review. The arbitration panel awarded damages to Metaclad, and the reviewer upheld the award. However, the language the reviewer used in upholding the decision could create potential problems for NAFTA investors. The reviewer gave a narrow interpretation to the "fair and equitable treatment" language, which leaves potential investors without much guidance as to what rights they have or to how they can assure their rights are safeguarded.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

David Flint, *Fanning the Flames . . . or Flaming the Fans? More Inconsistencies of the UDRP*, 22 BUS. L. REV. 91 (2001).
Discussing the domain name disputes as resolved under Internet Corporation for Assigned Names and Numbers' (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP), Flint demonstrates the inconsistencies of the results of these cases. Cases discussed involved yourmove.com, brucespringsteen.com, and JulieBrown.com.
{74} SUBJ MATTER: GENERAL

Joseph P. Folger, *Mediation Research Studying Transformative Effects*, 18 HOFSTRA LAB. & EMP. L.J. 385 (2001).
This Article was part of a large symposium that involved a collaboration of theorists and practioners to develop transforming approaches to mediation. Folger analyzes three main areas: the link between mediation ideology and research, alternative ways of studying mediation, and a recent research project that attempted to document transformative mediation in the workplace. The conclusion stresses that no one perfect type of mediation exists and mediation is put into practice with different ideological stances.
{21} MED: RELATED PROCESSES—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Lawrence Fox, *Those Who Worry About Ethics of Negotiation Should Never Be Viewed as Just Another Set of Service Providers*, 52 MERCER L. REV. 977 (2001).
Fox's address concentrates on three themes of the Symposium. He focuses on the idea of client autonomy and states that the profession must revisit it in negotiation contexts. He also discusses the role of the lawyer in negotiations with third parties. Finally, Fox discusses the public policy as to whether there should be limits on what is negotiable.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{138} Ethics

Fulvio Fracassi, *Confidentiality and NAFTA Chapter 11 Arbitrations*, 2 CHI. J. INT'L L. 213 (2001).
The Author challenges the existence of a general duty of confidentiality in the area of commercial arbitrations and argues that, even if such a duty does exist, it should have no application in the context of NAFTA Chapter 11 arbitral proceedings. The Author explores case law from Sweden, Australia, and the United States, as well as NAFTA arbitral decisions and international commentary in support of the notion that confidentiality should not be assumed as a requirement.
{132} CONFIDENTIALITY

Sandra J. Franklin, *Arbitration Technology Cases*, 80 MICH. B.J. 30 (2001).
The use of arbitration is evaluated within the booming world of technology. Franklin's Article looks at why arbitration may be important to the determination of a technology case, and then identifies the main reasons that technology cases are by nature arbitrable. The Author summarizes certain areas of technology such as government contracting and intellectual property and addresses recent trends of arbitration in those areas.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Martin A. Frey, *Does ADR Offer Second Class Justice?*, 36 TULSA L.J. 727 (2001).
In this Article, the Author evaluates the various forms of dispute resolution to determine whether the perception that alternative forms offer second-class justice holds true. Specifically, the Author suggests that a first-class dispute resolution process provides the parties with impartiality, a just process, and a just and correct result. After applying this criteria, the Author finds that all dispute resolution processes possess shortcomings. Therefore, the Author suggests that parties should not look to one process as superior to the others, but should make their selection based upon which process conforms most with their interests.
{136} ECONOMIC ADVANTAGES OF ADR

Paul D. Friedland, *Place of Arbitration in Contract is Vital*, N.Y. L.J., Oct. 31, 2001, at s8.
This Article discusses the effect of the place of arbitration in international disputes. It looks at the relative convenience, the selection of the arbitrators, judicial interference or support during the arbitral process, the enforceability of the arbitral award, and the selection of an arbitral institution. It also provides some specific examples within these issues.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Bret Fulkerson, *A Comparison of Commercial Arbitration: The United States and Latin America*, 23 HOUS. J. INT'L L. 537 (2001).
This Article explores the similarities and differences between attitudes toward arbitration in the United States and Latin America (specifically Brazil, Venezuela, and Mexico). It argues that historically there has been a significant difference in the way arbitration is viewed in the two regions because of the differences in legal cultures, histories, concerns about national sovereignty, and the role of the state in the administration of justice. Overall, the Article contends that Latin America has made strides toward reducing the

limitations on the enforcement of arbitration awards; however, it claims that there is still room for improvement in both the United States and Latin America in this area.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Richard M. Gaba, *Arbitration in Public Sector Labor Disputes*, 56 DISP. RESOL. J. 65 (2001).
This Article investigates how the New York Court of Appeals has departed from its long-held position, established in its *Liverpool* decision, that the issue of the arbitrability of public sector labor disputes was for the courts to decide. The Article discusses the implications of the recent *Watertown* and *Indian River* decisions, which ease judicial scrutiny of the issue of arbitrability. Also, this Article includes a comprehensive survey of previous decisions regarding this topic.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{133} COURT REFORMS

Emmanuel Gaillard, *First International Chamber of Commerce Pre-Arbitral Referee*, N.Y. L.J., Feb. 7, 2002, at 3.
The International Chamber of Commerce (ICC) rendered its first decision since its establishment over ten years ago in October 2001. If the dispute is an urgent matter that cannot wait for arbitration, the parties can agree on a referee to enforce binding temporary measures. If the parties do not agree, the ICC will appoint a referee. Referees have power to enforce contractual agreements and order urgent measures to restore a party being damaged.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Emmanuel Gaillard, *Interference from National Courts in the International Arbitral Process*, N.Y. L.J., Feb. 1, 2001, at 3.
There is a danger to the international arbitration process when national courts intervene too much. In a couple of cases, national courts have stepped in and either revoked the authority of the arbitrator or invalidated the arbitration award. This means that the choice of a country in which to arbitrate becomes very important. Most national courts, however, do not interfere. They merely look to see if there is a valid arbitration agreement and leave the rest to the arbitration process.
{92} SUBJ MATTER: INT'L

Emmanuel Gaillard, *International Arbitration and Environmental Disputes*, N.Y. L.J., June 7, 2001, at 3.
International arbitration is an effective means of resolving environmental disputes. The nature of the involved parties, the fact that many laws from different legal systems are considered frequently in environmental disputes, and the oftentimes highly technical aspects of environmental law all point in favor of using arbitration on an international stage to resolve environmental disputes.
{124} COMPARISONS: CROSS-CULTURAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Emmanuel Gaillard, *The New ADR Rules of the International Chamber of Commerce*, N.Y. L.J. , Oct. 10, 2001, at 3.
The Article discusses the decline in requests for conciliation, as opposed to a rise in requests for arbitration, submitted to the International Court of Arbitration of the International Chamber of Commerce (ICC). To remedy this situation, the ICC passed the new Alternative Dispute Resolution (ADR) Rules of the ICC that replace the ICC's 1988 Rules of Conciliation. The new ADR Rules will offer an institutional framework for the amicable settlement of business disputes by a neutral party. ICC defines ADR as "amicable dispute resolution" rather than "alternative dispute resolution."
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL

Mary P. Gallagher, *Collaborative Divorce Promises Dissolution Without the Distress: Linchpin to Controversial Process is an Agreement That the Lawyers Will Drop Out if the Settlement Falls Through*, N.J. L.J., Apr. 16, 2001, at 181.
The Article discusses an alternative dispute resolution technique called "collaborative family law" or "collaborative divorce." The technique differs from traditional methods of mediation and arbitration in that there is no third-party decisionmaker or facilitator. Additionally, parties agree at the outset that if the process fails and litigation is required, each will hire a new lawyer.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

W. Michael Garner, *Inside the Drug Emporium Decision*, 20 FRANCHISE L.J. 1 (2001).
The Author of this Article, who was also counsel for the franchisees in the Drug Emporium arbitration, reviews the arbitration panel's decision to issue

an injunction barring the franchisor from selling over the Internet into the territories of its franchisees.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{81} SUBJ MATTER: CORPORATE

Susan K. Gauvey, *ADR's Integration in the Federal Court System*, 34 MD. B.J. 36 (2001).
Judge Gauvey, a district court Magistrate for the District of Maryland, discusses the general definition and history of alternative dispute resolution (ADR), focusing primarily on its integration into the federal court system. She explores the effectiveness of ADR in reducing the costs of litigation and in achieving quicker, more satisfying resolutions of disputes, noting that while evidence tends to point to the success of ADR, research findings are currently insufficient. She concludes with reflections of her own experiences with ADR in the federal judicial system.
{133} COURT REFORMS

David A. Geisler II, *Waiver? Not Yet. After More Than Eight Years of Pre-trial Litigation the Second Circuit Orders Arbitration*, 2001 J. DISP. RESOL. 119.
In *Crysen/Montenay Energy Co. v. Shell Oil Co. and Scallop Petroleum Co.*, the U.S. Court of Appeals for the Second Circuit held that a failure to plead the affirmative defense of arbitrability in subsequent pleadings did not amount to an express waiver of that defense although it caused considerable prejudice to the plaintiff. The court found that eight years of litigation did not constitute prejudice although Plaintiff expended time, money, and resources in the pre-trial litigation for such a long period. If eight years is not prejudicial then the term (prejudicial) becomes meaningless.
{133} COURT REFORMS

Jeffrey Ghannam, *Taking E-Commerce to Task; Panel Ponders Guidelines for Providing ADR To Settle Online Disputes*, A.B.A. J., Apr. 1, 2001, at 89.
Five sections of the American Bar Association are developing standard dispute resolution guidelines for e-commerce sites to implement in order to avoid litigation. Issues confronting the task force are maintaining confidentiality of electronic communications, and whether or not mandatory arbitration is appropriate.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{79} SUBJ MATTER: CONSUMER

John Gibeaut, *Detour to ADR: A New Round of Employment Issues Is Coming to Court as Companies Look to Refine the Wording of Workers' Contracts*, A.B.A. J., Oct. 1, 2001, at 50.
This Article discusses the continuing conflict over mandatory arbitration clauses in employment contracts. Gibeaut discusses the primary issues involved in the recent cases that have appeared in the courts and the role that the Equal Employment Opportunity Commission plays in these conflicts. The Article also examines many of the inherent intricacies of these arbitration clauses, such as the costs imposed on the parties and the problem of proving such clauses unenforceable in court.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{133} COURT REFORMS

David M. Glanstein, *A Hail Mary Pass: Public Policy Review of Arbitration Awards*, 16 OHIO ST. J. ON DISP. RESOL. 297 (2001).
The U.S. Supreme Court's decision in *United Paperworkers International Union v. Misco* is discussed, along with the types of public policy review of arbitration awards. Parties seeking vacatur of awards face a high burden to meet the public policy standard, particularly if the public policy is not well defined in the positive law. Nonetheless, when based on firm statutory grounds or constitutional bases, awards may be successfully challenged.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Monica Beck Glover, *Recent Development, Arbitration (Annual Survey of Case Law)*, 23 U. ARK. LITTLE ROCK L. REV. 1021 (2001).
This survey section operates much like that of a recent events article. The Author looks at four recent cases regarding some aspect of arbitration and gives a short summary of the facts and resolution for each given dispute. The first case is a U.S. Supreme Court decision holding that parties to an arbitration are not forced to bring an action to confirm, vacate, or modify an arbitration award in the same district where the arbitration took place; the second case is a U.S. Court of Appeals for the Eighth Circuit decision holding that courts can find that excessive arbitration fees make an arbitration agreement unconscionable; and the last two matters are Arkansas cases dealing with enforceability of arbitration discovery orders and mutual assent in the formation of arbitration agreements.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{128} REQUIREMENTS: STATUTORY OR RULES

Chuck Gnaedinger, *Be Willing To Negotiate with Trade Partners, Predecessors Tell Incoming U.S. Trade Representative*, 22 TAX NOTES INT'L 828 (2001).
Former U.S. trade representatives participated in a seminar offering advice to incoming U.S. Trade Representative, Robert Zoellick, on solving trade disputes. All the former representatives agreed that negotiation was the best and most effective way to solve international trade disputes. Dispute topics that were covered included European Union trade issues, trade with poorer countries, and cyberspace tariffs and duties.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{92} SUBJ MATTER: INT'L
{108} SUBJ MATTER: TAX

Robert Gordon, *Ready for ADR?*, 43 FOR DEF. 12 (2001).
This Article is a concise summary of the negotiation, mediation, and arbitration options and procedures of alternative dispute resolution (ADR). The Author presents explanations of the various benefits of choosing ADR as an alternative to litigation, with a special emphasis on the economic advantages and on the potential for online dispute resolution. This Article offers suggestions on preparing for ADR, and explains generally what the process may involve for litigants and law firms interested in pursuing ADR.
{74} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR
{151} ROLE OF LAWYERS

Robert Gordon, *The Electronic Personality and Digital Self*, 56 DISP. RESOL. J. 8 (2001).
Due to its cost-effectiveness, easy scheduling, and overall efficiency, the Internet is a growing forum for alternative dispute resolution. This forum has many advantages. People who have less social status than their opponent can express themselves with more confidence than in a face-to-face situation because their "digital self" does not feel inferior due to status. Another advantage is that participants can better understand what the other side is saying because there is no distraction due to non-verbal cues.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Ian Gordon, *English Arbitration Clauses and Anti-Suit Injunctions*, 151 NEW L.J. 122 (2001).
This Article discusses an English court's decision, in *XL Insurance v. Owens Corning*, to enforce an injunction on Owens Corning from litigation proceeding in the state of Delaware. In a contract between the two parties, an arbitration clause had stated that disputes would be decided by arbitration in London. No country's law was chosen by the parties. The English court decided that the statement that disputes would be settled in London implied English law would be used. Therefore, the English court issued an injunction to stop Owens' proceedings in Delaware as the proceedings represented a breach of contract by Owens.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Henry Gottlieb, *Arbitration Agreement Held To Cover Tort Claims from Law Firm Breakup: Public Policy Benefit of Arbitration Trumps Any Vagueness in Clause*, N.J. L.J., Dec. 3, 2001, at 809.
This Article briefs a recent New Jersey decision ordering arbitration of claims stemming from the breakup of a law firm. The state's policy in favor of liberal interpretation of arbitration agreements trumped the partnership agreement's rather vague arbitration clause.
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Henry Gottlieb, *Large Cedant Shareholder Barred from Arbitration Over Settlement*, N.J. L.J., May 21, 2001, at 4.
In *In re: Cendant Corporation Litigation*, the U.S. Court of Appeals for the Third Circuit held that shareholders could not opt out of a class action after the proscribed deadline even if the stock deal had an arbitration clause. Issues outside the class action can still be brought to arbitration. Dissenting Judge Garth said arbitration should have taken precedence over class action procedure.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS

Henry Gottlieb, *Lawyers Get Green Light to Send Litigation in Progress to Factors*, N.J. L.J., Jan. 15, 2001, at 1.
The New Jersey Supreme Court's Advisory Committee decided it is ethical for lawyers to encourage their clients to obtain judgment advances from outside factors. When a plaintiff has a no-fail case, and where liability and

coverage are "known" up-front, these factors give the plaintiff a lump sum. The outside factor is then reimbursed after the judgment.
{138} ETHICS: GENERAL

Robert Goulder, *U.S. Competent Authority Open to the Use of Arbitration*, 90 TAX NOTES 1464 (2001).
The Article discusses IRS Official Carol Dunahoo's speech to the Federal Bar Association's Twenty-fifth Annual Tax Conference. Dunahoo discussed her willingness to include binding arbitration provisions in future agreements with foreign tax authorities, even though this is something the IRS has traditionally opposed. She also discussed timeliness issues in her office, and the new transfer pricing survey.
{108} SUBJ MATTER: TAX

Hani Greenburg, *Mediation: The Role of Assumptions in Dispute Resolution*, 75 L. INST. J. 68 (2001).
Understanding the assumptions that underlie the positions of parties to mediation is key to facilitating a discussion, rather than an argument, of the issues at hand. Parties make assumptions about the facts, intentions of the other party, and the outcome that the other party desires. There are several examples given where once the parties better understood the assumptions they and their opponents had made, reaching a compromise became easier.
{21} MED: RELATED PROCESSES—GENERAL

Jenna Greene, *Tug of War Continues Over Webcast Fees*, N.Y. L.J., Aug. 21, 2001, at 5.
The Copyright Arbitration Royalty Panel is engaged in resolving the dispute between copyright owners (artists and recording labels) and Internet webcasters over the royalties to be paid for music heard over Internet radio. The fee per song will be miniscule—copyright owners propose 4/10 of a cent, webcasters offer .015 of a cent—but the royalty will be calculated per listener. When multiplied by an estimated U.S. audience of 75 million listeners, the arbitrators' determination of the appropriate fraction of a cent royalty will have a dramatic effect on the economics of the business of webcasting.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{106} SUBJ MATTER: SECURITIES

David Greenswald & John R. Hupper, *Sharing Fees in Arbitration of Federal Claims*, N.Y. L.J., Nov. 6, 2001, at 1.
This Article discusses in great detail the cases addressing the issue of arbitrator fees that are paid by the parties. Although lower cost is often times

mentioned as a benefit of arbitration, the Author emphasizes that the cost of the arbitrator can erase this benefit completely.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Shepard R. Grimes, Comment, *The Federal Regional Fishery Management Councils: A Negotiated Rulemaking Approach to Fisheries Management*, 6 OCEAN & COASTAL L.J. 187 (2001).
This Comment explores the potential for changes in the administrative rulemaking process for federal fisheries management and, more specifically, the regional council approach. The Author argues that criticisms of negotiated rulemaking in general apply to the federal fisheries' regional councils and should therefore be applied to the councils in order to implement changes in the enabling legislation, the rulemaking process, and the structure and membership of the regional councils.
{84} SUBJ MATTER: ENVIRONMENT
{87} SUBJ MATTER: GOV'T

James P. Groton et al., *A Comparison of Dispute Review Boards and Adjudication*, 18 INT'L CONSTRUCTION L. REV. 275 (2001).
A comparative study of mechanisms used to resolve construction project disputes in the United States and Great Britain. The Authors examine the American Dispute Review Boards and the English adjudication process. The Article contains an analysis of the historical development of these two mechanisms, the characteristics and objectives of each, and discussion of the similarities and differences of the two mechanisms. The strengths and weaknesses of these two mechanisms are also considered.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

George Guttman, *A Closer Look at the Industry Issue Resolution Program*, 90 TAX NOTES 1769 (2001).
The IRS has developed a new pilot program, named Industry Issue Resolution (IIR), as an alternative dispute resolution program. IIR focuses on issues heavily disputed between business taxpayers and the IRS. The IIR will attempt to provide guidance to the taxpayers and opportunities to resolve pre- and post-filing controversies. The IIR pilot program will be completed by November 30, 2001, and the IRS will then evaluate whether to make IIR a permanent program.
{108} SUBJ MATTER: TAX
{38} NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL

Cynthia J. Halliberlin, *Transforming Workplace Culture Through Mediation: Lessons Learned from Swimming Upstream*, 18 HOFSTRA LAB. & EMP. L.J. 375 (2001).
This Article discusses the transformation that occurred almost overnight within the U.S. Postal Service. The Author takes the reader through the story of how the Resolve Employment Disputes, Reach Equitable Solutions Swiftly (REDRESS) program began and the immediate effect that mediation had on U.S. postal employees. Specifically, the program helped decrease the number of complaints and improve the workplace environment through better communication between employers and employees, management, and laypersons.
{21} MED: RELATED PROCESSES—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Amy Hamilton, *IRS Negotiating Resolution of INDOPCO-Type Issues with Two Industries*, 90 TAX NOTES 728 (2001).
The IRS is trying to change its approach toward corporate tax disputes. It has adopted an industry-level dispute resolution process that encourages corporations to "come clean" before they are audited and in return avoid potentially penalties or litigation. The change allows the IRS to be more business-results oriented, which reflects the change in the American professional and service sectors over the past decade. Sections within the IRS are working more closely to encourage dispute resolution of all kinds.
{134} DISPUTE PREVENTION
{108} SUBJ MATTER: TAX

Lan Q. Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, 41 SANTA CLARA L. REV. 837 (2001).
Given the sudden explosion of cyberspace use to conduct business and exchange information, online disputes have become more and more common. Instead of having such disputes adjudicated in courts where little law and precedent exists concerning cyberspace, a better alternative is to have them resolved by online dispute resolution systems. Although there are currently a number of impediments with these systems, they have the potential to offer quick and satisfactory resolution in the world of cyberspace.
{144} LEGISLATION
{136} ECONOMIC ADVANTAGES OF ADR
{146} ORGANIZATION POLICIES & RULES

Johanna Harrington, *To Litigate or Arbitrate? No Matter—the Credit Card Industry Is Deciding for You*, 2001 J. DISP. RESOL. 101.
Credit card companies have now begun to insert mandatory binding arbitration clauses into credit card agreements. Given the pro-arbitration attitude taken by the courts, consumers are hard-pressed to avoid such restrictive agreements through the judiciary. In addition, courts have found the Truth-In-Lending Act to be compatible with the Federal Arbitration Act (FAA), though its purpose was to protect consumers from lenders. There have been various attempts at the federal and state level to undo mandatory arbitration agreements in credit card contracts, but they have been limited. For any substantive change in this regard, Congress must amend the FAA.
{144} LEGISLATION
{147} POWER IMBALANCE
{137} EFFECTS OF PROCESS ON NON-PARTICIPATORY PARTIES

Michelle Hartmann, *A Myriad of Contradiction with Title VII Arbitration Agreements*—Duffield *as the Past,* Austin *as the Future, and the EEOC as the Target of Restructuring*, 54 SMU L. REV. 359 (2001).
This Article examines past actions by courts and agencies and presents a prospective view of the mandatory arbitration of Title VII claims. It argues that arbitration clauses that are signed by an individual as a precondition of employment should be treated identically to arbitration clauses negotiated by a union representative and put into a collective bargaining agreement; they should both be upheld.
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Susan Haslip, *A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada*, 11 MARQ. SPORTS L.J. 245 (2001).
This Article explores the Canadian perspective in the area of dispute resolution in sport, focusing on the needs of athletes and national sport organizations. The Author explores the dispute resolution mechanisms currently in place and the influence of international sports regulations on Canadian sport. The Article concludes by presenting a model for a national dispute resolution system for high performance sport in Canada.
{93} SUBJ MATTER: LABOR-GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Grant M. Hayden, *The University Works Because We Do: Collective Bargaining Rights for Graduate Assistants*, 69 FORDHAM L. REV. 1233 (2001).

Hayden addresses the growing movement of graduate students turning to collective bargaining to gain better employment consideration for their work as graduate assistants. Included in this discussion is an analysis of existing frameworks defining the dual nature of graduate assistants as students and as employees. Hayden argues from a public policy viewpoint that graduate assistants should be afforded the same collective bargaining rights as other organized employee groups.
{83} SUBJ MATTER: EDUCATION
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Stephen L. Hayford, *Federal Preemption and Vacatur:The Bookend Issues Under the Revised Uniform Arbitration Act*, 2001 J. DISP. RESOL. 67.
Two issues concerned the drafters of the Revised Uniform Arbitration Act (RUAA)—federal pre-emption and vacatur. Regarding federal pre-emption, drafters of the RUAA considered the fact that the Federal Arbitration Act (FAA) superseded state law conflicting with the FAA's prime directive that agreements to arbitrate be enforced. Drafters therefore left issues concerned with the enforcement of the agreement to arbitrate untouched. However, the drafting committee did find that it could establish uniform procedural standards for arbitrations. Regarding vacatur, the committee noted the fluctuating case law in different jurisdictions with respect to when arbitration clauses should be enforced and decided merely to clarify grounds for vacatur in the RUAA.
{144} LEGISLATION

David Hechler, *ADR Finds True Believers*, N.J. L.J., July 9, 2001, at 25.
Hechler examines the current disposition of arbitration and mediation among the Fortune 1000 companies. Of 1000 companies surveyed originally in 1997 by David Lipsky and Ronald Seeber, eighty-seven percent had used mediation and eighty percent had used arbitration at least once. The Article puts particular focus on the number of companies, approaching ten percent or more, that have begun institutionalizing alternative dispute resolution by instituting conflict management systems.
{81} SUBJ MATTER: CORPORATE
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{21} MED: RELATED PROCESSES—GENERAL

Timothy J. Heinsz, *The Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, 2001 J. DISP. RESOL. 1.
The Revised Uniform Arbitration Act (RUAA) was drafted with three goals in mind—allowing party autonomy in creating an arbitration agreement provided that it conformed to basic notions of fundamental fairnes, giving

weight to the benefits of arbitration whenever possible, which include, speed, lower cost, and efficiency, and limiting the grounds on which a court may review an arbitration award. Basically, the RUAA codifies current arbitration law upon which most state and federal courts have agreed. RUAA also has updated some UAA provisions to reflect modern times.
{144} LEGISLATION
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Timothy J. Heinsz, *Arbitration Law: Is There a RUAA in Missouri's Future?*, 57 J. MISS. B. 86 (2001).
The Author discusses the Revised Uniform Arbitration Act (RUAA), proposing that the RUAA presents important changes in the arbitration landscape that should be considered for adoption by state legislatures. Particularly, these include a facilitation of "e-arbitration," consolidation of claims, and disclosure of potential conflicts of interest. Additionally, the Author discusses the significance of RUAA approaches to discovery, arbitrability, and remedies that offer significant reform to the Federal Arbitration Act and to the former Uniform Arbitration Act.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION

Scott Hejny, Comment, *Opening the Door to Controversy: How Recent ICANN Decisions Have Muddied the Waters of Domain Name Dispute Resolution*, 38 HOUS. L. REV. 1037 (2001).
The tremendous growth of the Internet has led to many intellectual property issues. This Article addresses recent developments in the regulation of cyberspace. Specifically, the Article analyzes the formation and effect of the dispute resolution scheme administered by the Internet Corporation for the Assigned Names and Numbers (ICANN). In the analysis, this Article provides an evaluation of cases that have been through the ICANN arbitration system.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Laurence R. Helfer & Graeme B. Dinwoodie, *Designing Non-National Systems: the Case of the Uniform Domain Name Dispute Resolution Policy*, 43 WM. & MARY L. REV. 141 (2001).
Domain name disputes may transcend national borders, such that international dispute resolution procedures are necessary. The Authors address the challenges to national governments and individuals of trans-border disputes arising from digital technologies and assess the growth of "non-national" lawmaking. Because the Uniform Domain Name Dispute Resolution Policy (UDRP) has been suggested as a model for resolving

international disputes, its genesis and structure are assessed. Finally, the Authors examine the application of a modified UDRP to other trans-border disputes.
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{146} ORGANIZATION POLICIES & RULES

Jean Hellwege, *Arbitration Agreement Is Unenforceable if Costs Are Too High,Court Says*, TRIAL, Nov. 1, 2001, at 16.
This Article discusses a New York federal court ruling that an employee who can show that it would cost him or her much more to arbitrate an employment discrimination claim than to bring it before a court should not be forced into arbitration.. The case held that employees can be required to honor their commitments to arbitrate Title VII claims, but only if the arbitration process meets "minimal fairness requirements."
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{102} SUBJ MATTER: PUBLIC POLICY

John E. Hemberra, Jr., *PFAs: Still the Choice for Dispute Resolution?*, 93 TAX NOTES 742 (2001).
This Article discusses the Prefiling Agreement (PFA) program launched by the Internal Revenue Service less than two years ago and how it has fallen short of expectations. Whether PFAs will continue to be emphasized as a key tool for dispute resolution is addressed. The Author suggests that perhaps the PFA program just needs more time to develop. The large and midsize Business Division of the Internal Revenue Service agrees that the program may just need more time to become active and accepted.
{108} SUBJ MATTER: TAX

Gregg Herman, *The Ten Commandments of Domestic Negotiations*, 13 DIVORCE LITIG. 9 (2001).
The Author discusses ten rules any family attorney should follow to overcome the fundamental roadblocks to divorce litigation settlement. The Article stresses the importance of settlement for the family and centers its rules on cordial relationships between the parties.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Meinhard Hilf, *Power, Rules and Principles: Which Orientation for WTO/GATT Law?*, 4 J. INT'L ECON. L. 111 (2001).
Hilf presents a discussion of how the World Trade Organization (WTO) system has moved toward a "principle-oriented system" from an early

reliance on power and rules. By examining the sources of General Agreement on Tarrifs and Trade (GATT) and WTO law and rules, common international law, and the legal systems of member states, the Author identifies various principles upon which the WTO operates. The Article further discusses the relationship between rules and principles in the European Community and determines that the primary principle of proportionality should be a balancing guide in all resolution of disputes.
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES
{125} COMPARISONS: HISTORICAL

Steven Hill, *International Chamber of Commerce Arbitration*, 26 YALE J. INT'L L. 552 (2001).
This Article is a review of the Internal Chamber of Commerce's (ICC) unofficial comprehensive publication of ICC arbitration. The review discusses ICC arbitration, jurisdiction, procedure, affect of national law on international arbitration, trends in international commercial arbitration, and statistics.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Buck Hinkle, *Does the Proliferation of ADR Hinder the Development of Construction Law?*, CONSTRUCTION LAW., Spring 2001, at 4.
This Comment proffers that although alternative dispute resolution (ADR) is a useful mechanism and clients must be counseled as to its availability, over-reliance on ADR would be detrimental to construction law because it would restrict the necessary development of case law in the area. As a remedy, the Author calls for reasoned awards and relaxed standards of appellate review for construction law ADR.
{80} SUBJ MATTER: CONSTRUCTION

Ann C. Hodges, *Arbitration of Statutory Claims in the Unionized Workplace: Is Bargaining with the Union Required?*, 16 OHIO ST. J. ON DISP. RESOL. 513 (2001).
In order to preserve employee rights created by an increasing number of statutes, Professor Hodges argues that unions ought to have a role in negotiating statutory arbitration processes. Such involvement would prevent overreaching by employers and help to ensure that the arbitration process is utilized and survives judicial challenge.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ann C. Hodges, *Take 'em to Arbitration*, 165 N.J. L.J., Aug. 13, 2001, at S-7.
There has been a rising number of arbitration cases in U.S. Supreme Court decisions. This term there were five. Three of the cases dealt with the enforceability of arbitration agreements, and two with the scope of judicial review of arbitration awards. Sometimes the justices sided with business and sometimes the justices took the individual's side, but in all cases the Court upheld the importance of the arbitration system itself.
{133} COURT REFORMS

Ann C. Hodges, *U.S. Supreme Court Roundup Take 'em to Arbitration Five Times This Term, Justices Stand Up for Integrity of the Arbitration System*, N.J. L.J., Aug. 13, 2001, at s7.
The U.S. Supreme Court decided five arbitration cases in its fall 2000 term and upheld the integrity of the arbitration system in each of those five cases. This Article talks in detail about those cases, *Circuit City Stores, Inc. v. Adams*, *Green Tree Financial Corp.-Alabama v. Randolph*, *C&L Enterprise v. Citizen Band Potawatomi Indian Tribe*, *Eastern Associated Coal Corp. v. United Mine Workers*, and *Major League Baseball Players Ass'n v. Garvey*. The Author highlights how arbitration is growing in popularity among businesses as a method of dispute resolution, and gives a preview of *EEOC v. Waffle House*, a case to be decided in the fall 2001 term.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS

Elizabeth A. Hoffman, *Confrontations and Compromise: Dispute Resolution at a Worker Cooperative Coal Mine*, 26 LAW & SOC. INQUIRY 555 (2001).
This Article looks at the differences in the resolution of disputes at a large coal mine in South Wales between the time when the mine was operated in a hierarchical structure by British Coal and when it was later bought out by the employees and converted into a worker cooperative. The Author uses facts and testimony from workers to show that the less formal and less contentious dispute resolution structure of the cooperative, along with the shared power and information between management and employees, has led to an operation that is much more efficient and less amenable to work stoppages than before.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{81} SUBJ MATTER: CORPORATE
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{147} POWER IMBALANCE

James R. Holbrook, *Mediator Focus: Mediation Advocacy in a Nutshell*, UTAH B.J., June 1, 2001, at 26.
Counsel for a party in mediation should understand that the mediator is not the decisionmaker in the process. Counsel should also explain mediation to the client and arrive at constructive ways to express the client's interests, keeping in mind settling options and criteria. The client and attorney should demonstrate a commitment to solving the problem with the other side, listen carefully to the opponent, and be prepared to ask the mediator to evaluate the merits of other settlement methods.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Gunther J. Horvath, *The Duty of the Tribunal To Render an Enforceable Award*, 18 J. INT'L ARB. 135 (2001).
This Article surveys a variety of sources, including treaties, national legislation, institutional rules, national court decisions, arbitral awards, and commentaries, and explores the source of, the scope of, and the limits to the tribunal's duty to render an enforceable award. The Article develops the foundation of the duty to render an enforceable award, fulfilling the duty, breach of the duty, and limits of the duty under both national law and institutional rules.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

David Hricik, *Lawyer-Client Arbitration Agreements*, 12 PROF. LAW., Spring 2001, at 24.
Hricik discusses and analyzes ethical issues surrounding the use of arbitration agreements in attorney fee and medical malpractice disputes. The Article looks at the advantages and disadvantages to arbitration in both fee and malpractice areas. Further, the Author also suggests ways that attorneys and medical professionals wanting to arbitrate claims should proceed with the matter, both in theory and practice. At the end of the Article there is a model arbitration form included.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{138} ETHICS: GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{99} SUBJ MATTER: OTHER PROFESSIONAL MALPRACTICE

Stephen K. Huber, *The Role of Arbitrator: Conflicts of Interest*, 28 FORDHAM URB. L.J. 915 (2001).
The Author discusses how arbitration is taught in law schools, with emphasis upon how law school ethics and professional responsibility classes approach

the issue of the conflicts of interest of arbitrators. Specific types of arbitrator conflicts of interest are examined and discussed, as are proceedings that combine arbitration with mediation. The Article also contains an appendix that examines and evaluates how the subject of arbitration is addressed in a number of different law school contracts textbooks.
{155} TEACHING
{138} ETHICS: GENERAL

Andrew Hughes & Ben Pilling, *The Arbitration Act Five Years On*, 151 NEW L.J. 1432 (2001).
The Authors review developments in arbitration law since the enactment of the British Arbitration Act of 1996. They conclude that courts have generally been cautious when invited to interfere with the arbitral process and have been supportive of arbitral tribunals. Their frequent citation to the Act has led to a coherent and consistent body of case law. Additionally, courts have shown a willingness to promote arbitration as a form of dispute resolution.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION
{92} SUBJ MATTER: INT'L

Scott H. Hughes, *The Uniform Mediation Act: To the Spoiled Go the Privileges*, 85 MARQ. L. REV. 9 (2001).
This Article thoroughly discusses two provisions of the Uniform Mediation Act that relate to exceptions to the mediation privilege contained in the act. The particular emphasis of this Article is on confidentiality in mediation, the self-determination of parties, and the conflict between the two. The Author resolves that mediation privilege should yield to the promotion of self-determination.
{21} MED: RELATED PROCESSES—GENERAL
{132} CONFIDENTIALITY

Patricia Hughes, *Ethics in Mediation: Which Rules? Whose Rules?*, 50 U. N.B. L.J. 251 (2001).
Hughes explores ethical standards for lawyers in mediation, both as representatives of clients and as mediators. More specifically, these issues are explored from a Canadian perspective. Lawyers as representatives and lawyers as mediators are addressed separately. The more easily accomplished resolution is to modify the usual rules to accommodate the lawyer's representative role, which is easier than identifying the appropriate ethical obligations of the lawyer-mediator and the proper governing authority.
{21} MED: RELATED PROCESSES—GENERAL
{138} ETHICS: GENERAL

J. Gordon Hylton, *The Historical Origins of Professional Baseball Grievance Arbitration*, 11 MARQ. SPORTS L.J. 175 (2001).
The Article discusses the history of professional baseball grievance arbitration in light of the 1999 John Rocker disciplinary incident. The right to grievance arbitration has been a concern of baseball players since the nineteenth century, and the Author traces its development from 1879 to the present.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Karen A. Intrater & Traci Gabhart Gann, *The Lawyer's Role in Institutionalizing ADR*, 18 HOFSTRA LAB. & EMP. L.J. 469 (2001).
This Article looks at the historic journey of the U.S. Postal Service towards a mediation-based employer-to-employee relationship as an alternative to the traditional Equal Employment Opportunity counseling process. The analysis focuses mainly on a description of the mediation program and the role of attorneys within that program, organizational necessities that propelled the program forward and the keys to the success of the legal department of the Post Office in initiating and sustaining the program.
{21} MED: RELATED PROCESSES—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Walid Iqbal, *Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition*, 28 FORDHAM URB. L.J. 1035 (2001).
This Article identifies that all historical evidence relating to the Islamic legal system consistently points to the importance of suhl—compromise, settlement, or agreement between the parties to a dispute. The Article examines the traditions of adjudication and alternative dispute resolution (ADR) in the seventeenth century Ottoman practice, the modern day Saudi legal system, and the modern day Moroccan legal system. The Author concludes by stating that the ADR mechanism is embedded in the Islamic concept of justice, through the emphasis of suhl.
{124} COMPARISONS: CROSS-CULTURAL
{151} ROLE OF LAWYERS

Mori Irvine, *Better Late than Never: Settlements at the Federal Court of Appeals*, WASH. ST. B. NEWS, Oct. 1, 2001, at 34.
The U.S. courts of appeals have implemented programs to provide alternative avenues for settlement to disputants. This Article gives a brief history of the legislation authorizing and encouraging these programs. The Author then lists the reasons why parties would want to settle at the appeals level. Finally,

the Author details the U.S. Court of Appeals for the Eleventh Circuit's mediation program as an example of the federal courts' mediation efforts.
{133} COURT REFORMS
{21} MED: RELATED PROCESSES—GENERAL

Mori Irvine, *Better Late Than Never: Settlement at the Federal Court of Appeals*, 55 WASH. ST. B. NEWS 24 (2001).
This is part two of a two part Article reprinted from The Journal of Appellate Practice and Process. This portion of the Article focuses on dealing successfully with mediation as an adjunct to appeals before the federal courts of appeals. Lawyers are advised on effectively using mediation to the benefit of appellate clients through a presentation of the "Ten Commandments of Effective Mediation." The Article contrasts mediation conducted after a trial with pretrial mediation.
{21} MED: RELATED PROCESSES—GENERAL

S. Kathleen Isbel, Note and Comment, *Compulsory Arbitration of Employment Agreements: Beneficent Shield or Sword of Oppression?*, 22 WHITTIER L. REV. 1107 (2001).
This Note and Comment examines the holdings, history, and public policy issues of the *Armendariz v. Foundation Health Psychcare Services, Inc.* decision, which concerns an agreement to arbitrate as a condition of employment. The pre-employment arbitration provision was held to be void, and the Supreme Court of California created a five-part test for unconscionability.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

John H. Jackson & Patricio Grane, *The Saga Continues: An Update on the Banana Dispute and its Procedural Offspring*, 4 J. INT'L. ECON. L. 581 (2001).
This Article updates the banana dispute and its progeny by reporting on the long trail of panels, arbitration, and procedural battles left in the wake of the regulation adopted by the European Commission in May 2001. Specifically, the Article reports on four distinct matters of the banana dispute and provides a table of all the disputes initiated since 1993 and that are connected to the banana dispute.
{92} SUBJ MATTER: INT'L

Sherry Jeffries & Andrew A. Patriaco, *Alternative Dispute Resolution for Automobile Insurance Disputes*, CORP. COUNS., Oct. 10, 2001, at A2.
The Authors discuss the use of arbitration in the context of "no-fault" insurance disputes between an insured driver and the insurance company. One benefit is the speed with which disputes can be resolved between the parties, which is of particular concern to injured persons who must cover the cost of their medical treatment until the dispute with the insurance carrier is resolved. Another benefit is the technical skill and expertise of the arbitrator.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE

Sherry Jeffries & Andrew A. Patriaco, *Alternative Dispute Resolution for Automobile Insurance Disputes*, CORP. COUNS., Oct. 1, 2001, at A2.
This Article discusses New Jersey's "no fault program" and the success of the program. The Article also argues that arbitration programs, such as New Jersey's no fault program, have several benefits over litigation. For example, the Article explains that the no fault option is significantly quicker in resolving these automobile disputes, as opposed to the traditional litigation option.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE

Raymond Joe & Julian S. Milstein, *Think Arbitration When Drafting Internet Contracts*, 165 N.J. L.J., Aug. 20, 2001, at S-11.
This Article proposes the use of arbitration as a dispute resolution mechanism for resolving Internet disputes. The Authors argue that because the internet lacks an established and reliable judicial system, it needs to provide for effective accountability. The Article explains the process of drafting an effective arbitration clause and the type of arbitration proceedings that should be used.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Sarah Johnson, Note, *ADR in the Employment Discrimination Context: Friend or Foe to Claimants*, 22 HAMLINE J. PUB. L. & POL'Y 335 (2001).
The intent of this Note is to show that while arbitration has provided a forum and a means for dispute resolution in many situations where traditional adjudication might be too expensive or impractical for parties, the use of arbitration in Title VII discrimination actions has achieved unsatisfactory results. The Author's reasoning is that while Title VII was passed by Congress with specific and meaningful remedies for employee discrimination, the arbitral forum, which is not bound to use the remedies of

Title VII, does not afford an aggrieved employee the same rights and leverage as an action filed under a claim of federal law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Stephen Jones, *A Child's First Steps: The First Six Months of Operation—the ICANN Dispute Resolution Procedure for Bad Faith Registration of Domain Names*, 23 EUR. INTELL. PROP. REV. 66 (2001).
In examining Internet Corporation for Assigned Names and Numbers's (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP), this Article illustrates specific panel decisions in the first six months and distills trends in panelists' approaches to the Policy. The Author looks at the principal strengths and weaknesses of the Policy and suggests some modifications to the Policy that include providing time limits, allowing answers to party briefs, and clarifying the need for parties to prove the legitimate interests of other parties.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{76} SUBJ MATTER: COMMERCIAL

Dan Kagan & Jack Erler, *Alternative Dispute Resolution*, 16 ME. B.J. 222 (2001).
Alternative Dispute Resolution (ADR) became mandatory in Maine Superior Court on Jan. 1, 2002. This Article presents arguments for and against the mandated alternative dispute resolution. It also discusses practical advice on using ADR and the civil procedure rule governing the use of ADR.
{74} SUBJ MATTER: GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Peggy Rogers Kalas, *International Environmental Dispute Resolution and the Need for Access by Non-State Entities*, 12 COLO. J. INT'L ENVTL. L. & POL'Y 191 (2001).
Over the last three decades, transboundary pollution has become a serious threat to the human population and the environment. However, current international dispute mechanisms fail to provide an adequate forum for individual grievances regarding pollution created by private entities such as transnational corporations. Only in rare situations have non-state actors been allowed to take their case to international and regional forums, and even in those instances, at least one party must be a state. This problem may be alleviated by an international environmental court which, among other things, would provide a system that would be accessible to a range of actors.

{138} ETHICS: GENERAL
{144} LEGISLATION
{147} POWER IMBALANCE

Mark Kantor, *International Project Finance and Arbitration with Public Sector Entities: When Is Arbitrability a Fiction?*, 24 FORDHAM INT'L L.J. 1122 (2001).
The Author considers how arbitration has been used as a dispute resolution mechanism in international project financing transactions in which one of the parties is a state actor. Three cases are primarily considered, two involving disputes between an American company and a utility company owned by the Indonesian government, and one involving a dispute between the same American company and a utility company owned by Pakistan's government. In the Indonesian cases, the arbitrators' awards against the Indonesian government were upheld, and in the Pakistani case, an anti-arbitration injunction was awarded in favor of the Pakistani company.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Alan S. Kaplinsky & Mark J. Levin, *Consumer Financial Services Arbitration: The Millennium Edition*, 56 BUS. LAW. 1219 (2001).
This Article discusses recent cases that are attempting to settle many issues pertinent to consumer arbitration so that parties will have a better understanding of what is acceptable in the consumer financial services arbitration area, especially with regard to the Truth in Lending Act. Arbitration is favored in the consumer context, and lenders without arbitration clauses are encouraged to adopt them immediately.
{79} SUBJ MATTER: CONSUMER
{76} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jack E. Karns, *The National Labor Relations Board Redefines "Medical Employee" Under the Wagner Act Regarding Residents and Interns, Thereby Opening the Door to Unionization and Collective Bargaining Demands*, 77 N.D. L. REV. 53 (2001).
This Article addresses differences between two major cases deciding how the National Labor Relations Board defines "medical employee" under the Wagner Act regarding residents and interns, which has an effect on whether such individuals can collectively bargain and unionize. The 1976 *Cedars-Sinai Medical Center* decision, holding that residents and interns were not medical employees, was overruled by the 1999 *Boston Medical* decision, and the Author favors this change in the law.

{89} SUBJ MATTER: HOSPITALS
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Constantine Katsoris, *The Resolution of Securities Disputes*, 6 FORDHAM J. CORP. & FIN. L. 307 (2001).
Arbitration and mediation provide an advantageous and speedy alternative to court litigation in the context of customer securities disputes. However, unless such procedures are fair, their popularity as settlement mechanisms will diminish. Currently, self-regulatory organizations (SROs) such as the NYSD and NASD have provided forums for these alternative dispute resolution procedures to take place. In order to assure uniformity of rules among various SROs, the Securities Industry Conference on Arbitration (SICA) was established and created the Uniform Arbitration Code for the securities industry. Thus far, the SICA's stabilizing influence, together with the SEC's oversight role, has induced investor confidence in the SRO arbitration system.
{136} ECONOMIC ADVANTAGES OF ADR
{38} NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL
{106} SUBJ MATTER: SECURITIES
{79} SUBJ MATTER: CONSUMER

David J. Kaufman, *Judicial Split of Arbitration Clauses*, N.Y. L.J., Oct. 31, 2001, at 3.
Article discusses two cases in *California Bolter v. Harris Research, Inc.* and *Ticknor v. Choice Hotels International, Inc.*, where the courts have held that a franchise agreement's arbitration provision was "unconscionable." The Article discusses the holding in these two cases and then makes a comparison to a New York case, *Hur v. Carvel Corp.*, where the court enforced franchise agreement arbitration.
{144} LEGISLATION
{81} SUBJ MATTER: CORPORATE

David J. Kaufmann, *The End of Arbitration in Franchising?*, N.Y. L.J., Feb. 2, 2002, at 3.
This Article criticizes the U.S. Court of Appeals for the Ninth Circuit decisions finding franchise agreements unconscionable adhesion contracts due to their non-negotiable nature. The Author argues that franchise agreements by definition must have continuity and that an individual's ability to operate his or her business independently lessens the potential take-it-or leave-it problem present in adhesion contracts. The Article concludes that if franchise agreements are by nature considered adhesion contracts, then

arbitration in the franchise context will become non-existent due to the lack of enforceability of agreements to arbitrate.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Stephanie E. Keer & Richard W. Naimark, *Arbitrators Do Not "Split the Baby": Empirical Evidence from International Business Arbitrations*, 8 J. INT'L ARB. 573 (2001).
This Article rejects the belief that arbitrators always aim to "split the baby" when resolving disputes. The Article asserts that, instead, arbitrators use an anchoring norm when deciding disputes. The Article reviews a study of arbitration awards. The study showed that only a small percentage of awards were compromise awards, while most arbitrations resulted in a clear winner and loser. The Article concludes that the "split the baby" theory is invalid.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Steven Keeva, *What Clients Want*, A.B.A. J., June 2001, at 48.
Lawyers are surprised at the mediation success rate and credit the mediators' perception and flexibility. Lawyers can learn from a mediator's well-rounded approach in order to gain insight into what clients really want, not just what they are asking. By following a holistic approach, a lawyer can help prevent nervous clients from making decisions that, although sound legally, are not correct for them. In order to get to what a client really wants a lawyer should not become short sighted on what the client says and, instead, should encourage the client to look at the possibilities.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Catherine Kessedjian, *Court Decisions on Enforcement of Arbitration Agreements and Awards*, 18 J. INT'L ARB. 1 (2001).
This Article deals primarily with jurisdictional problems that arise, when parties seek to arbitrate in an international setting. The Article's main areas of concern are state court validation of arbitration agreements, provisional measures in support of arbitration proceedings, and whether federal courts possess the power to set aside or enforce arbitration agreements from other countries.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Salima Oines Khakoo, Note, *Punishment Without Purpose: Confronting Ill-Designed Sanctions in Minnesota's Welfare Reform Efforts*, 22 HAMLINE J. PUB. L. & POL'Y 253 (2001).
This Note explores the results of changes in the national welfare structure and, specifically, the effect such changes have had on Minnesota residents regarding the use of welfare sanctions to penalize those individuals and families who do not comply with the new work requirements of Temporary Assistance to Needy Families (TANF). The Note advocates the use of alternative dispute resolution, in such processes as community mediation and early neutral evaluation, to improve a sanction policy that too often ignores the specific needs of welfare recipients whom have difficulty complying with the required work plans.
{21} MED: RELATED PROCESSES—GENERAL
{38} NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL
{102} SUBJ MATTER: PUBLIC POLICY

Angela L. Kimbrough, *Consumers in a Bind*, TRIAL, June 1, 2001, at 36.
Presumably, binding arbitration agreements in insurance polices could fall under the Federal Arbitration Act (FAA). However, the FAA contradicts state law policies preventing the arbitration in this area. In response, the McCarran-Ferguson Act creates a reverse preemption providing that where a federal statute does not specifically deal with insurance it cannot supercede a state statute dealing with insurance. The McCarran-Ferguson Act applies if a three-prong test, established by the U.S. Supreme Court, is satisfied.
{91} SUBJ MATTER: INSURANCE

Jeffrey S. Klein & Nicholas J. Pappas, *Cost-Sharing in the Arbitration of Statutory Employment Claims*, N.Y. L.J., Oct. 1, 2001, at 64.
Recent U.S. Supreme Court decisions have encouraged employers to adopt arbitration provisions covering statutory claims. An unresolved issue is to what extent employees can be forced to share in the costs of arbitration. In particular, there are widely conflicting decisions within the U.S. Court of Appeals for the Second Circuit as to the circumstances under which cost sharing will serve as a bar to the enforcement of arbitration agreements. Those employers considering the adoption of arbitration agreements are urged to take a conservative approach to preserve the enforceability of the arbitration clause.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Galen L. Knack & Ann K. Bloodhart, *Do Franchisors Need To Rechart the Course to Internet Success?*, 20 FRANCHISE L.J. 1 (2001).
The arbitration panel determined that the franchisor's selling of products through its own Internet website encroached on the protected territories of its franchisees' brick-and-mortar stores. In light of this decision, the Authors suggest several considerations franchisors need to take into account when implementing an Internet strategy and constructing franchise agreements. Of special concern is the role of franchisees' individual websites and the ownership of customer data collected thereon.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{81} SUBJ MATTER: CORPORATE

Adrienne Koch, *Mandating Arbitration After* 'Circuit City', N.Y. L.J., June 7, 2001, at 1.
While the U.S. Supreme Court decision in *Circuit City Stores, Inc. v. Adams* answered some questions, it left others unanswered. Most importantly, the Court found that the Federal Arbitration Act (FAA) did not apply to persons actually involved in the transportation industry, a view held by a majority of the federal courts of appeals. However, the Court saved some questions. Next term the Court will explain how the FAA affects persons filing claims with the Equal Employment Opportunity Commission for employment discrimination where an arbitration provision covers employee-employer disputes.
{128} REQUIREMENTS: STATUTORY OR RULES
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Tijana Kojovic, *Court Enforcement of Arbitral Decisions on Provisional Relief: How Final Is Provisional?*, 18 J. INT'L ARB. 511 (2001).
This Article discusses the problem of court enforcement of arbitration decisions in the international realm. The Author gives a detailed discussion of how European and U.S. courts approach arbitration enforcement. Lack of consistency causes cross-border differences in enforcement that work to undermine the effectiveness of arbitration. Therefore, courts' broader acceptance of arbitration awards is recommended.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Stuart Kollmorgen & Andrew Maher, *Arbitration Restored: Dispute Resolution Under Certified Agreements*, 14 AUSTRALIAN J. LABOUR L. 210 (2001).
This Article examines the High Court of Australia's decision in *Construction, Forestry, Mining and Energy Union v. the Australian*

Industrial Relations Commission, concluding that the commission's arbitral powers are unlimited by statute and limited only by the powers given by parties. The Article argues that the decision restored and even increased the scope of the commission's arbitral powers, and focused on the concept of private arbitration, which could reinvigorate the commission's power to arbitrate in industrial disputes.
{104} SUBJ MATTER: REGULATORY

Nancy R. Kornegay, Comment, Prima Paint *to First Options—the Supreme Court's Approach to the Federal Arbitration Act and Fraud*, 38 HOUS. L. REV. 335 (2001).
Beginning with its holding in *Prima Paint v. Flood & Conklin Manufacturing*, the U.S. Supreme Court has gradually supplanted state arbitration and contract law with the provisions of the Federal Arbitration Act (FAA). While several of the Court's more recent decisions may signal a reversal of this trend, in practice they have only caused a great deal of confusion in the lower courts. This Article examines the Court's interpretation of the FAA and suggests that clarity may be achieved only if the Court revisits the issue.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Kimberlee K. Kovach, *New Wine Requires New Wineskins: Transforming Lawyer Ethics for Effective Representation in a Non-Adversarial Approach to Problem Solving: Mediation*, 28 FORDHAM URB. L.J. 935 (2001).
The Author discusses ways in which the mediation process has been combined into the litigation process, and some of the difficulties that have arisen as a result. The ways in which mediation is addressed in the rules of professional responsibility governing lawyers is discussed as well. The Author also suggests some new rules for lawyers in the mediation process, with a goal of making the mediation process into a less adversarial proceeding.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Richard Krever, *Compromise Saves Australia-U.S. Treaty Negotiations*, 23 TAX NOTES INT'L 1415 (2001).
This Article discusses how a last minute compromise saved a tax treaty between the United States and Australia. The compromise will reduce the dividend withholding tax rate from fifteen percent to five percent and the royalty withholding tax rate from ten to five percent. Australia did not want to reduce these rates to zero because investments from the United States

comprise half of Australia's foreign investments and a zero tax rate would cause a substantial revenue loss.
{92} SUBJ MATTER: INT'L
{108} SUBJ MATTER: TAX

Lewis Kurlantzick, *John Rocker and Employee Discipline for Speech*, 11 MARQ. SPORTS L. REV. 185 (2001).
In the context of the 1999 John Rocker professional baseball disciplinary incident, this Article explores the reach of the Commissioner of Baseball's authority to regulate players' off-field behavior. The Article also discusses whether the incident implicates federal civil rights laws and how Rocker would have fared under various state statutes designed to limit private employer interference with employee speech interests.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{93} SUBJ MATTER: LABOR—GENERAL

Rodney C. Kyle, *Arbitration Makes Sense in International Intellectual Property Disputes*, 56 DISP. RES. J. 30 (2001).
The main purpose of this Article is to discuss the preference for arbitration instead of litigation in intellectual property disputes. It discusses the legal bases for the unanimous decisions of the Supreme Court of Canada in which two lower court decisions were abrogated. The Article also discusses the legal consequences brought forth by the adoption of the Model Law on International Commercial Arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Judith A. La Manna, *Mediation Can Help Parties Reach Faster, Less Costly Results in Civil Litigation*, N.Y. ST. B. ASS'N. J., May 2001, at 10.
Mediation, which has become increasingly popular with judges and has historically been used most prominently in the settlement of traditional labor disputes, should be embraced by litigators and employed in a broad range of disputes. Mediation ought to be divorced from the prevalent negative sentiments surrounding arbitration, which stem from finality and the difficulty in overturning the decisions of arbitrators. Even in those cases where mediation does not resolve the dispute between the parties, the process will help define the issues, and thus facilitate the trial process.
{21} MED: RELATED PROCESSES—GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Labor Law—Arbitration Appeals—Standard of Review, N.J. L.J., July 16, 2001, at 70.
The U.S. Supreme Court reversed a decision by the U.S. Court of Appeals for the Ninth Circuit that rejected an arbitrator's factual findings, ruled on the merits, and barred further proceedings in *Major League Baseball Players Ass'n v. Garvey*. The Court found that the Ninth Circuit could not overturn an arbitrator's factual findings and replace them with its own simply because it disagreed. Rather, if the award was inappropriate it should have been remanded to the arbitrator.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS

James Laflin & Robert Werth, *Another Look at the Microsoft Mediation: Lessons for the Civil Litigator*, ADVOC., Nov. 1, 2001, at 17.
This Article compares the Microsoft mediation process with another high profile mediation, one involving user rights in Idaho's Sawtooth National Forest and considers what can be learned from the two widely divergent approaches. The Authors offer suggestions for improving the chances of parties and mediators resolving complex public and private disputes through consensual processes. The Article also addresses how the process of mediation excels generally and how the underutilization of this process represents wasted capital value.
{21} MED: RELATED PROCESSES—GENERAL
{75} SUBJ MATTER: ANTITRUST

Adam Lamparello, Note, *Reaching Across Legal Boundaries: How Mediation Can Help the Criminal Law in Adjudicating "Crimes of Addiction"*, 16 OHIO ST. J. ON DISP. RESOL. 335 (2001).
The Author details the failure of the traditional criminal law in responding to crimes of addiction. The aspects of the retributivist-model criminal court system are compared with the rehabilitative model. The success of drug courts, combined with the efficacy and resource saving aspects of mediation, indicate the appropriateness of the implementation of mediation for individuals who plead guilty to drug and alcohol related crimes.
{21} MED: RELATED PROCESSES—GENERAL
{82} SUBJ MATTER: CRIMINAL
{132} CONFIDENTIALITY

Scott Lansdown, *AIPN Model Form Lifting Agreement*, 52 INST. ON OIL & GAS L. & TAX'N 12-1 (2001).
This Article provides an overview of the AIPN Model Form Lifting Agreement. The Article describes the processes provided for in the

agreement, such as establishing the parties' entitlements and taking production. Within its discussion of general provisions in the agreement, the Article briefly discusses dispute resolution mechanisms provided for in the Lifting Agreement.
{74} SUBJ MATTER: GENERAL

Sabina Lauber, *Where to Now? International Woman's Rights: As Women, As Global Citizens and As Australians, How Should We View the Outcomes of Beijing Plus Five?*, 26 ALTERNATIVE L.J. 16 (2001).
From the perspective of an Australian woman who attended the United Nations Beijing Plus Five Conference, this Article evaluates the gains and losses made in the negotiated outcome document. At this world conference on women, governments met to discuss obstacles, progress, and strategies for the equality of women. Gains were made in discussing woman's issues ranging from health to violence and discrimination, but important battles remain in future negotiations and implementation.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{92} SUBJ MATTER: INT'L
{77} SUBJ MATTER: CIVIL RIGHTS

Linda E. Laufer, *How To Handle Salary Negotiation*, N.Y. L.J., Jan. 5, 2001, at 24.
Laufer argues that in creating a strategy for salary negotiations, it is important to begin by assessing one's basic needs. Next, Laufer says employees should be realistic about a fair salary and determine at what level a person could feel good about working. Lastly, it is important to investigate the range of salaries reasonably expected to be paid by employers for positions like the one sought.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Justin E. LaVan, *Strategies To Avoid Enforcement of Arbitration Clauses*, 24 TRIAL LAW. 139 (2001).
Under certain circumstances the enforcement of arbitration clauses can be avoided. Like several other states, Iowa has adopted the Uniform Arbitration Act, but with modifications. Among the modifications are limitations on the enforceability of arbitration agreements in adhesion contracts or for tort claims. Other strategies to avoid enforcement include restrictions on the imposition of financial burden, limitations of statutory remedies, and use of the length of the statute of limitations periods.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Leading by Example, 145 SOLIC. J. 302 (2001).
To promote the English government's support for alternative dispute resolution (ADR), Lord Chancellor announced an initiative requiring the settlement of governmental legal disputes through the process of arbitration or mediation and only allowing for litigation as a last resort. Not only does this initiative express a governmental commitment to ADR techniques, but it also creates an opportunity for the English government to show its commitment to conditional fees.
{87} SUBJ MATTER: GOV'T
{124} COMPARISONS: CROSS-CULTURAL

Jessica Learmond-Criqui & Justin Costley, *Arbitration in Employment Disputes*, 22 BUS. L. REV. 222 (2001).
On May 21, 2001, the Arbitration Scheme was passed in the United Kingdom allowing cases for alleged unfair dismissal (employment) to be pursued through the arbitration route. The type of cases best-suited for arbitration are the straight forward cases, which leaves the court open for the more complex cases.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Jacob S. Lee, *No "Double-Dipping" Allowed: An Analysis of* Waste Management, Inc. v. United Mexican States *and the Article 1121 Waiver Requirement for Arbitration Under Chapter 11 of NAFTA*, 69 FORDHAM L. REV. 2655 (2001).
Article 1121 of North American Free Trade Agreement (NAFTA), which is designed to prevent claimants from "double-dipping," requires a claimant to waive their right to maintain any other proceedings based on the same alleged breach through any other dispute settlement as a condition precedent to invoking NAFTA arbitration. The NAFTA tribunal may, therefore, declare the waiver to be valid and binding, but then find the dispute is not an actionable claim under NAFTA. To cure this defect, retrospective application of the Article 1121 waiver—wherein rights would not actually be waived until the dispute is determined to be actionable under NAFTA – is preferable to prospective application.
{128} REQUIREMENTS: STATUTORY OR RULES
{92} SUBJ MATTER: INT'L

Michael H. LeRoy & Peter Feuille, *Private Justice in the Shadow of Public Courts: The Autonomy of Workplace Arbitration Systems*, 17 OHIO ST. J. ON DISP. RESOL. 19 (2001).
This Article discusses workplace arbitration systems. Specifically, it measures judicial review of workplace arbitration awards in both labor-management and individual rights areas. The Authors thereby demonstrate how courts hold workplace arbitration accountable to public laws. With one exception, most courts have performed appropriately in the labor-management area. Courts have also acted appropriately in the individual employment area, even though they are here hampered by a lack of clear reviewing standards.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Murray S. Levin, *The Propriety of Evaluative Mediation: Concerns about the Nature and Quality of the Evaluative Opinion*, 16 OHIO ST. J. ON DISP. RESOL. 267.
The differences between evaluative and facilitative mediation are described. The Author also discusses existing and developing standards for mediation, including uniform acts and court rules in individual jurisdictions. The value and quality of evaluative mediation is questioned, stressing that it is important to dispel confusion about what disputants will experience in a mediation. Nonetheless, the Author concludes that evaluative mediation should be retained as an option for parties who so desire.
{21} MED: RELATED PROCESSES—GENERAL

Daphna Lewinsohn-Zamir, *The Choice Between Property Rules and Liability Rules Revisited: Critical Observations from Behavioral Studies*, 80 TEX. L. REV. 219 (2001).
In the long standing debate between property and liability rules, this Article rejects the adoption of liability rule protection for entitlements. Rather, this Article supports the use of property rules whenever bargaining is possible because property rules encourage and educate the parties and promotes successful bargaining amongst all participating parties.
{79} SUBJ MATTER: CONSUMER

Christina S. Lewis, *Class Action vs. Arbitration: Does TILA Support Class Actions in Arbitration Where Statutory Rights Are Concerned?*, 2001 J. DISP. RESOL. 133.
In *Johnson v. West Suburban Bank*, the U.S. Court of Appeals for the Third Circuit found that an arbitration provision preventing a class action under statutory rights may be upheld. However, such a holding must not conflict with the congressional intent of the statute or the Federal Arbitration Act and

must allow for Plaintiff's rights to be vindicated. Nonetheless, denial of class action under these circumstances would run counter to the public policy of stopping small claims violations and should therefore be reconsidered.
{133} COURT REFORMS
{144} LEGISLATION

Christoph Liebscher, *Reform of Austrian Arbitration Law*, 18 J. INT'L ARB. 211 (2001).
The Article discusses how 33 countries have adopted their arbitration laws to conform with the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration. The Article discusses the Model Law and whether Austria should also reform its laws similarly. The Article discusses the scope of the application of the Model Law, how arbitration agreements are reached under the Model Law, and the extent to which courts are involved in the Model Law. More specifically, the Article discusses the courts' functions, jurisdiction, and appellate procedures under the Model Law as well as the challenges to arbitration decisions and the liability of arbitrators under the Model Law. In addition, statute of limitations, interim measures, the principles, rules of evidence, confidentiality, and coercive measures of the Model Law are explained. Finally, the Article discusses the types of awards available and how the awards can be set aside.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Life After Banana Wars: Questions and Answers with Charlene Barshefsky, 8 CORP. COUNS., Oct. 10, 2001, at 18.
This Article is a conversation with trade expert Charlene Barshefsky, whose negotiating skills are credited with setting China on track to becoming a member of the World Trade Organization. In this Article, Barshefsky discusses a variety of issues including her new job, the banana wars, and the Bush administration's new controversial stance on the Kyoto Protocol.
{92} SUBJ MATTER: INT'L
Sung J. Lim, Note, *Mandatory Arbitration in the Securities Industry: Efficiency at the Cost of Justice for All?*, 26 J. CORP. L. 771 (2001).
This Note presents multiple cases in which women and minorities have been arguably disenfranchised by mandatory arbitration clauses in their employment contracts. The Author's main argument is that mandatory arbitration clauses should be eliminated because too often employees are not encouraged to thoroughly review such adhesion agreements and the protections afforded by claims under both Title VII of the Civil Rights Act of

1964 and the Civil Rights Act of 1991 should not be withheld from an employee unless by that employee's own free and informed choice.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Anthony Lin, *Love of the Games Draws Attorney to Salt Lake City*, N.Y. L.J., Feb. 6, 2002, at 1.
David Rivkin of Debevoise and Plimpton in New York was one of two Americans who went to Salt Lake City to serve on the Court of Arbitration for Sport. With arbitrators from eight nations, this court is meeting for the fourth time as an impartial means to settle Olympic disputes. This court generally follows international law of custom and treaty, and rulings are usually appealed in Swiss courts. Arbitrators are only compensated for travel, but they are given full access to the games.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Melinda G. Lincoln, *Conflict Resolution Education: A Solution for Peace*, 23 COMM. & L. 29 (2001).
Lincoln surveys methods and processes of mediation and their effectiveness in educating students and community members about conflict resolution. She explains the curative effects mediation can have with regard to such problems as school violence. She shows that communication theory and practice can positively effect conflict resolution education, through its focus on speaking and listening skills, identifying issues, and utilizing coping strategies.
{83} SUBJ MATTER: EDUCATION
{21} MED: RELATED PROCESSES—GENERAL

Michael Lind, *ADR and Mediation-Boom or Bust?*, 151 NEW L.J. 1238 (2001).
The Author discusses the use of alternative dispute resolution in the United Kingdom. In particular, he describes mediation and early neutral evaluation and examines the relative merits of each in resolving legal disputes, concluding that the usefulness of alternative dispute resolution is not yet fully appreciated in the UK.
{114} 3RD PARTY: PRACTICE OF LAW
{133} COURT REFORMS
{146} ORGANIZATION POLICIES & RULES

Derek J. Lisk, *Arbitration Awards in Texas Courts*, 64 TEX. B.J. 534 (2001).
To vacate arbitration awards in Texas, courts apply either the Federal Arbitration Act, the Texas Arbitration Act, or Texas common law. The Federal Arbitration Act allows for vacancy if the arbitrator is guilty of corruption, partiality, procedural misconduct, or abuse of power. The Texas Arbitration Act allows vacancy of an award in cases of corruption, prejudice, failure to follow arbitral procedure, or lack of jurisdiction. Texas common law allows for vacancy for fraud, mistake, or misconduct.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{133} COURT REFORMS

Lori Litchman, *Arbitration Award Cannot Be Reviewed by Court for Errors of Law: Westmoreland County Common Please Judge Rejects Request To Vacate Award*, 24 PA. L. WKLY. 8 (2001).
Judge Charles H. Loughran of Westmoreland County Court of Common Pleas held that pursuant to 42 Pa. Cons. Stat. Ann. section 7314, an arbitrator's error is not a basis to vacate an arbitration award. Arbitration awards can only be appealed when the appellee can prove fraud, misconduct, or irregularities in the proceedings.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{110} SUBJ MATTER: OTHER TORTS

Lori Litchman, *Claims Examined in the Aggregate When Determining Arbitration Amount; Superior Court Panel Says Language of Arbitration Agreement Leads to Trial*, 24 PA. L. WKLY. 6 (2001).
This Article discusses the reasoning and outcome of a dispute between the Zoological Society of Philadelphia and Intech Construction Inc., heard in *Zoological Society of Philadelphia v. Intech Construction Inc.* The Article discusses the decision to use the Federal Arbitration Act instead of the

Pennsylvania Uniform Arbitration Act as controlling law, and looks at the court's examination of the language of the arbitration clause.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lori Litchman, *Whether To Arbitrate to be Decided by Arbitrator*, 24 PA. L. WKLY. 8 (2001).
Judge R. Stanton Wettick held that it is within an arbitrator's discretion to determine whether a second priority insurer involved in an uninsured motorist claim should be required to participate in arbitration. Because this issue was not for the court to decide, the court granted the motion to compel arbitration and upheld the determination of the arbitrator to force participation of the insurer.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{121} SETTLEMENT: AUTHORITY
{137} EFFECTS OF PROCESS ON NON-PARTICIPATORY PARTIES

Lori Litchman, *Woman Can't Demand Arbitration on Coverage Issue Under Policy Language*, 24 PA. L. WKLY. 1 (2001).
In the discussed auto insurance case, the issue was whether claims of who is insured could be decided by arbitration or by the court. In this case, the insurance contract specifically referred "insured" persons to the courts instead of arbitration. Therefore, the wife covered under her husband's policy was forced to resolve her uninsured motorist claim in the local courts.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE

John A. Litwinski, *Regulation of Labor Market Monopsony*, 22 BERKELEY J. EMP. & LAB. L. 49 (2001).
Litwinski argues that antitrust laws should prohibit collective bargaining for wages and striking by labor unions and that antitrust law should be extended to prohibit, or at least regulate, firms' abilities to exercise labor market monopoly power. This Article attempts to reconcile antitrust and labor law by challenging the currently flawed legal and economic approaches to labor unions and the historical defenses of unions. The Article also examines antitrust exemption's components and problems they try to address.
{93} SUBJ MATTER: LABOR—GENERAL

Les Livingstone, *Certified Public Accountants . . . Can Be Arbitrators Too*, 56 DISP. RES. J. 39 (2001).
This Article primarily discusses how Certified Public Accountants (CPAs) can be used as arbitrators and how to decide if a CPA is qualified to be an arbitrator. It sets guidelines for what a well-trained CPA should know to be

used as an arbitrator. The first qualification for a CPA is substantive business knowledge and experience. They must also exhibit professional ethics and integrity. The ethical principles of CPAs are basically the same as ethical guidelines of arbitrators, so they are already trained in this area. Next, a CPA should have alternative dispute resolution skills: a grasp of legal concepts and the elements of due process, an understanding of the nature and competence of evidence, and the ability to deal with people effectively. The Article concludes that if the CPA meets all of these qualifications, he or she would be a good candidate to be an arbitrator.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{151} ROLE OF LAWYERS

Humphrey Lloyd, *Adjudication*, 18 INT'L CONSTRUCTION L. REV. 437 (2001).
This Article is an examination of adjudication in Great Britain as a mechanism for resolving disputes arising out of construction contracts. The nature and origins of adjudication are considered, with emphasis on the provisions of the Housing Grants, Construction and Regeneration Act of 1996. The Author describes the types of contracts that are governed by the Act, the powers of adjudicators in resolving disputes, the ways in which parties to a dispute can challenge an adjudicator's decision, and how adjudication relates to the English court system.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Aaron J. Lodge, Comment, *Legislation Protecting Confidentiality in Mediation: Armor of Steel or Eggshells?*, 41 SANTA CLARA L. REV. 1093 (2001).
This Comment explores the strength of legislation protecting mediation confidentiality, specifically focusing on court interpretation of such legislation and tests implemented to determine the admissibility of mediation communication as evidence. The Author proposes that contract law governs finalized agreements, with the mediation privilege applying only to agreements that are not finalized. The Author also asserts that parties should have the right to choose to create a confidential, non-binding agreement.
{21} MED: RELATED PROCESSES—GENERAL
{132} CONFIDENTIALITY
{144} LEGISLATION

Tamara Loomis, *No Contract Found For Web Site Users; Assent Lacking, Arbitration Clause Not Enforced*, N.J. L.J., June 21, 2001, at 1.
This Article examines whether Internet users are bound by licensing agreements for the download of free software when the agreement was not a limitation on the download. In the case of *Specht v. Netscape Communications Corp.*, the issue was decided in favor of the consumer because the agreement did not provide assent to the terms before download. The Author distinguishes the case from click-wrap licenses that courts have found valid as indicating assent.
{79} SUBJ MATTER: CONSUMER
{76} SUBJ MATTER: COMMERCIAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Tamara Loomis, *Mediation: An Effective Way To Settle Disputes Catches On*, N.Y. L.J., June 21, 2001, at 5.
This Article details JAMS, a nationwide provider of mediation services. Specifically, the Article focuses on the high success rate of mediation in dispute resolution, the overall satisfaction of the parties involved in mediation processes, and the costs of mediation services.
{134} DISPUTE PREVENTION
{136} ECONOMIC ADVANTAGES OF ADR

Sandy Lovell, *Other Issues Before Court: Enforcing Mandatory Arbitration in LAD Cases*, N.J. L.J. Apr. 2, 2001, at 6.
In *Garfinkel v. Morristown Obstetrics and Gynecology Associates*, the appellate court affirmed the lower court's ruling that an employment contract clause calling for the arbitration of disputes arising out an employment contract is enforceable against a physician's claim of gender discrimination because the physician, represented by counsel, knowingly and voluntarily waived his right to litigation.
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

L. Randolph Lowry & Peter Robinson, *Mediation Confidential*, LOS ANGELES LAW., May 2001, at 28.
Courts have recently carved out exceptions to confidentiality rules that are found in mediation proceedings. This Article discusses how the resolution of the confidentiality issue could have a negative effect on the use of mediation as trust in mediator confidentiality disappears. California courts are now

applying a balancing test to determine if public policy concerns outweigh the need for confidentiality.
{132} CONFIDENTIALITY
{102} SUBJ MATTER: PUBLIC POLICY

David L. Lupi-Sher, *Baseball Club Strikes out in Employment Tax Dispute*, 91 TAX NOTES 725 (2001).
This Article reviews a dispute between the Cleveland Indians baseball team and the government over the taxation of back wages. Finding for the federal government, the U.S. Supreme Court in a nine to zero decision held that back wages paid to baseball players under an arbitration agreement are subject to FICA and FUTA taxes by reference to the year the wages are in fact paid. The Court rejects any parallel between this dispute and a 1946 decision that involved social security benefits.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{108} SUBJ MATTER: TAX

Paul M. Lurie, *Recent Revisions to the Uniform Arbitration Act in the United States*, 18 J. INT'L ARB. 223 (2001).
Arbitration agreements and awards in the United States are governed by the Uniform Arbitration Act (UAA) or the Federal Arbitration Act. Fourteen states have adopted a version of the UAA, while thirty-five states have adopted the UAA in its entirety. The National Conference of Commissioners on Uniform State Laws officially approved a Revised Uniform Arbitration Act (RUAA) on August 3, 2000. RUAA has already been introduced for passage in eight states, and will replace the UAA over the next few years. The Article discusses the changes RUAA has made to the UAA.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION
{146} ORGANIZATION POLICIES & RULES

Todd A. Lyon, *Union Docs: The AMA, the HMO's, and Physicians' Rights To Collectively Bargain*, 89 ILL. B.J. 138 (2001).
Lyon analyzes the American Medical Association's (AMA) decision to implement a national labor organization to represent employed physicians and residents and to continue to support antitrust relief for self-employed physicians. The AMA reached these decisions in light of members' growing concern over the power wielded by the managed care entities, specifically with regard to patient care and physicians' fees. Lyon analyzes the problems that will arise with collective bargaining because of the varying employment status of physicians.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

{91} SUBJ MATTER: INSURANCE
{75} SUBJ MATTER: ANTITRUST

Barry A. Macey, *Response to Theodore J. St. Antoine and Michael C. Harper*, 76 IND. L.J. 135 (2001).
This is a critique of an Article written by Theodore J. St. Antoine about the changing role of labor arbitration. The Author agrees with two of the three arguments proffered by St. Antoine. He agrees that lower courts should not interfere with arbitration awards, and he also thinks that the Model Employment Termination Act (META), which prohibits terminating an employee without good cause, would be good for employee rights. However, he does not believe that mandatory arbitration of statutory employment discrimination claims would be advantageous to nonunion employees.
{93} SUBJ MATTER: LABOR—GENERAL

Gavin MacFarlane, *World Trade Bulletin*, N.Z. L.J. 7 (2001).
The Article summarizes important current events in the area of international trade. Items discussed include the recent World Trade Organization (WTO) ruling in the imported lamb case between the United States, Australia, and New Zealand and the naming of Robert Zoellick as the United States' new trade representative. The Article also discusses recent developments in world trade concerning endangered species and parallel trading.
{92} SUBJ MATTER: INT'L

Roger Mackenzie, *Learning from Across the Atlantic*, 46 J.L. SOC'Y SCOT. 33 (2001).
The Article gives a detailed description of Scottish solicitor Susan Clark's trip to Allentown, Pennsylvania to meet mediator and former-judge Edward Cahn. Clark's account of the trip showed the differences between the Scottish system of mediation, where the mediator assumes a role close to a judge, and the system implored by Cahn, where the mediator takes a more passive role by focusing on suggestions to the parties on how they can "get past no." Clark comments that visiting Cahn's office was most valuable in that it showed the virtue of establishing positive communication between the parties and encouraging them to appreciate the other side's views.
{21} MED: RELATED PROCESSES—GENERAL
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

Roger Mackenzie, *The Falkirk Experience*, 46 J.L. SOC'Y SCOT. 32 (2001).
The Author looks at efforts in Falkirk, Scotland to encourage parties in family disputes to participate in mediation. The Article notes that Falkirk is

the mediation center of Scotland because of the efforts of its solicitors to focus on the interests of the parties instead of just being concerned about collecting fees. If mediation is viewed as an option for disputants the the result is that unpleasant processes, like divorce, can be quicker, less aggressive, and less expensive for all concerned.
{21} MED: RELATED PROCESSES—GENERAL
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Susan T. Mackenzie, *A Mediator's Perspective on Effective Mediation Advocacy*, 12 PRAC. LITIGATOR 17 (2001).
Mediation is the newest, but quickly becoming the most popular, form of alternative dispute resolution. In ensuring success in mediation the most important aspects are maintaining a cooperative spirit and allowing the process and solutions to be flexible to suit the demands of the individual conflict. Additionally, by focusing on the parties' underlying interests and goals rather than on legal arguments and technicalities, attorneys are likely to find that mediation is more likely to result in an outcome more satisfactory to the parties.
{21} MED: RELATED PROCESSES—GENERAL

Amanda Maclachlan, *WIPO2—The Domain Name Consultation Process*, 151 NEW L.J. 596 (2001).
The Author reviews an interim report following an international consultation process commenced in July 1998. The report presents evidence of the abuse of Internet domain names in five key areas and suggests remedies that expand the use of Uniform Dispute Resolution Procedure (UDRP) to curb such predatory practices. UDRP is currently limited to trademark abuse.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Emily Madoff, *Arbitration Clauses Lethal to Class Actions: Consumer Contract Terms Insulate Business From Courts*, N.Y. L.J., Aug. 13, 2001, at S-3.
This Article discusses how companies, in an attempt to insulate themselves from class action liability, are including mandatory binding arbitration clauses in their form contracts to compel consumers, employees, and others to arbitrate, rather than litigate, claims. The Author gives a brief history of the issue in the context of the Federal Arbitration Act, talks about upholding and invalidating arbitration clauses, and examines current judicial and legislative trends. The Author advocates that courts should be skeptical and strike down compulsory arbitration clauses placed in consumer contracts by big businesses.

{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{81} SUBJ MATTER: CORPORATE

Majeed George Makhlouf, Recent Development, Saga Communications of New England, Inc. v. Voornas, 16 OHIO ST. J. ON DISP. RESOL. 437 (2001).
The Author looks at a recent decision by the Maine Supreme Court, *Saga Communications of New England, Inc. v. Voornas*, and details its effect on the waiving of arbitration rights. In its decision, the court found that if a party used the courts to resolve a dispute, the party was not free midway through the proceeding to enforce a prior existing arbitration agreement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Martin H. Malin, *Privatizing Justice—But By How Much? Questions* Gilmer *Did Not Answer*, 16 OHIO ST. J. ON DISP. RESOL. 589 (2001).
Professor Malin argues that in order to ensure basic due process safeguards, courts should "police" mandatory arbitration systems. In this way, employers will be unable to contract out of employer obligations provided in employment statutes. Moreover, courts should review legal interpretations from arbitration proceedings de novo, while deferring to the findings of fact in the proceedings.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Greg Mantle, *The Effectiveness of County Court Mediation*, 31 FAM. L. 147 (2001).
This Article reviews a study that examined how long mediation agreements between divorced couples lasted. About fifty percent of agreements lasted as least six months. Of those that failed, many involved couples that had more than one child or couples that had older children.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES—GENERAL

Gabrielle Marceau & Matthew Stilwell, *Practical Suggestions for Amicus Curiae Briefs Before WTO Adjudicating Bodies*, 4 J. INT'L ECON. L. 155 (2001).
As the process of dispute resolution by the World Trade Organization (WTO) has evolved, nongovernmental organizations have called for the acceptance amicus briefs during the decisionmaking process. With no uniform criteria currently existing that regulate acceptance and consideration of amicus briefs, the Author compares policies of other international fora to suggest the criteria that should be used by WTO panels in accepting and considering amicus briefs.
{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L
{137} EFFECTS OF PROCESS ON NON-PARTICIPATORY PARTIES
{146} ORGANIZATION POLICIES & RULES

Steven Marchese, *Putting Square Pegs into Round Holes: Mediation and the Rights of Children with Disabilities Under the IDEA*, 53 RUTGERS L. REV. 333 (2001).
This Article discusses the effects that mediation has on the enforcement of the Individuals with Disabilities Education Act (IDEA). The Author examines whether or not a mediation process can be created to meet the goals of the IDEA. The Author focuses on the pros and cons of mediation versus the adjudication process. Marchese concludes both schools and families must carefully evaluate whether mediation is the appropriate forum for settling disputes as it relates to each individual child.
{83} SUBJ MATTER: EDUCATION

Richard S. Mark et al., *Alternative Dispute Resolution Can Beat Litigation*, PRAC. TAX STRATEGIES, Oct. 1, 2001, at 227.
This Article discusses how mediation can help some taxpayers resolve certain disputes with the IRS more quickly and cheaply than litigation. The Article discusses how alternative dispute resolution (ADR) is better for the parties involved because they have more control over the process, greater flexibility, efficiency in the process, and greater privacy in the proceedings. The Article also emphasizes that rather than having a winner and a loser, ADR often leaves both parties feeling as though they have won something. The Article concludes that ADR will be used more often in the tax setting for the reasons mentioned above.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{108} SUBJ MATTER: TAX

Donald L. Marston, *Final and Binding Expert Determination as ADR Technique*, 18 INT'L CONSTRUCTION L. REV. 213 (2001).
This Article is a study of the settlement of disputes in the construction industry by expert determination. The Author discusses the differences between settlement by expert determination and by arbitration and considers how two recent Australian cases decided the issue of expert determination as a final and binding contractual mechanism for settling disputes pertaining to technical matters in construction contracts. The Author also considers Canadian models of construction dispute resolution.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Roderick Mathews, *Turning to ADR for Health Care Disputes*, CORP. COUNS., June 1, 2001, at A3.
Managed Health Care Organizations (MCOs) are increasingly using alternative dispute resolution (ADR) methods to resolve disputes. This increase is due to the decreasing protection for MCOs in the court system resulting from the "erosion of the ERISA shield." This Article points out the reasons that MC's are turning to arbitration, as well as the potential problems with using ADR in health care disputes. The Author also provides a number of reference sources.
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{79} SUBJ MATTER: CONSUMER

Claire Hamner Matturro, *In* Doig v. Chester, *Is the Third Time the Charm in the Continuing Saga of Medical Malpractice Arbitration and Set-off?*, 20 TRIAL ADVOC. Q. 4 (2001).
This editorial posits that, because of the continued confusion over a Florida medical malpractice arbitration statute, the Florida Supreme Court, the Florida Legislature, or both need to clarify whether it is appropriate for a court to allow a setoff of non-economic damages in a medical malpractice suit.
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{87} SUBJ MATTER: GOV'T

Claire Hamner Matturro, *Post Script: Fifth District Issues New Opinion on Rehearing in* Doig v. Chester, *a Medical Malpractice Arbitration Opinion*, 20 TRIAL ADVOC. Q. 31 (2001).
The Author examines the Fifth District's substituted opinion in a medical malpractice case involving both arbitration with the defendant physician and a pre-arbitration settlement by the defendant hospital. The court determined that, because the plaintiff's non-economic loss was capped by statute, the physician was entitled to setoff of that portion of the hospital's settlement that compensated the plaintiff's non-economic loss.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Tony Mauro, *Employers Get Win on Arbitration Pacts*, N.Y. L.J., Mar. 22, 2001, at 1.
In a recent U.S. Supreme Court decision, *Circuit City Stores, Inc. v. Adams*, the Court strengthened the ability of employers to enforce arbitration decisions. In general, employers want to enforce arbitration agreements, while employees believe they are disadvantaged by arbitration agreements because decisions are made privately and without precedential value. The

majority also ruled that the federal power preempts any state court remedies.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{133} COURT REFORMS

Ellen M. Maycock, *Early Neutral Evaluation*, 14 UTAH B.J., Nov. 1, 2001, at 36.
This Article explains the technique of early neutral evaluation and how this technique has grown in recent years, both in popularity and frequency of usage, coinciding with the increase in popularity of mediation and arbitration as alternative dispute resolution techniques in recent years. It also discusses the advantages and disadvantages of early neutral evaluation as a technique for facilitating settlement and discusses the types of cases that are the most suited to the use of the early neutral evaluation technique.
{114} 3D PARTY: PRACTICE OF LAW

Scott McBride, Note, *Dispute Settlement in the WTO: Backbone of the Global Trading System or Delegation of Awesome Power?*, 32 LAW & POL'Y INT'L BUS. 643 (2001).
This Article examines the potential constitutional infirmities arising from the decision of the United States to become a party to the World Trade Organization (WTO). Specifically, the Author advocates that the United States has a binding obligation under the WTO's dispute resolution procedures to conform its laws to any adverse rulings. Accordingly, the Author suggests that permitting the WTO to "legislate" raises constitutional concerns involving the delegations doctrine, accountability, access to the political process, as well as the treaty power.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Kate McCabe, *A Forum for Women's Voices: Mediation Through a Feminist Jurisprudential Lens*, 21 N. ILL. U. L. REV. 459 (2001).
This Article discusses the use of mediation with respect to women in society. The Author analyzes mediation with respect to women through the lens of feminist thought. The Author concludes that mediation provides a better opportunity than the traditional adjudicatory system for women to speak for themselves and share their experiences as women.
{21} MED: RELATED PROCESSES—GENERAL

Stephen H. McClain, *Moving in Style: The Supreme Court Has Distinguished the Appealability of Orders To Dismiss a Claim from Orders To Stay a Claim Pending Arbitration*, LOS ANGELES LAW., June 2001, at 39.
In *Green Tree Financial Corp.-Alabama v. Randolph*, the U.S. Supreme Court addressed the conflict regarding the appealability of decisions involving independent versus embedded claims based upon the duty to arbitrate. The Court followed the minority rule allowing appeals from motions to compel arbitration in which all other claims were dismissed, but not where the court granted a stay. This decision has left several issues unresolved. The most prominent issue left unaddressed is whether a court has the ability to dismiss Federal Arbitration Act claims.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{128} REQUIREMENTS: STATUTORY OR RULES

Aaron McClain, Recent Development Note, Green Tree Financial Corp.-Alabama v. Randolph,, 17 OHIO ST. J. ON DISP. RESOL. 229 (2001).
This Recent Development Note discusses the U.S. Supreme Court's opinion in *Green Tree Financial Corp.-Alabama v. Randolph.* The Author describes the Court's two significant holdings and how such holdings resulted in an important development in evaluating arbitration agreements. He also describes how this case demonstrates the potential for improvement in the law governing the enforcement of arbitration agreements. The Author asserts that following this case, the Court will continue to proactively support arbitration as an effective method for resolving disputes of degrees of complexity.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

James McIlroy, *Private Investment Claims Against State and Provinces—The Impact of NAFTA Chapter 11 on Sub-Federal Government Agencies*, 27 CAN.-U.S. L.J. 323 (2001).
Chapter 11 of NAFTA deals with the settlement of disputes between a NAFTA party and an investor of another NAFTA party. The point of discontent by Canadians is the fact that this provision allows private corporations to file claims against NAFTA parties that are there to promote and protect the government. This was not heretofore possible in previous treaties. However, the concern over Chapter 11 is overblown because case law has provided governmental protections. The few filed cases concerning Chapter 11 does not justify this extravagant Canadian reaction.
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

{81} SUBJ MATTER: CORPORATE
{87} SUBJ MATTER: GOV'T

Sonia McKay, *Shifting the Focus from Tribunals to the Workplace*, 30 INDUS. L.J. 331 (2001).
This Article details the new system that allows dismissed employees to chose binding arbitration over going to an employment tribunal. The Article then goes into a description of governmental proposed changes to make the system more effective and available.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Judith A. McMorrow, *The Advocate as Witness: Understanding Context, Culture and Client*, 70 FORDHAM L. REV. 945 (2001).
This Article discusses the advocate-witness rule, which interferes with the traditional attorney-client privilege rule when a lawyer-advocate is needed as a witness. The Author observes the rule's usage in federal courts, under state law, and in arbitration. Concluding that the rule is grounded in multiple policy concerns that appear inconsistent, the Author suggests that may merely be a reflection of its ability to adapt to entirely different contexts.
{151} ROLE OF LAWYERS
{93} SUBJ MATTER: LABOR—GENERAL

Natalie McNelis, *The Role of the Judge in the EU and WTO: Lessons from the BSE and Hormone Cases*, 4 J. INT'L ECON. L. 188 (2001).
Beef, whether produced from hormone treated cattle or originating from the U.K. after the outbreak of the disease BSE, was labeled as unfit for human consumption and its import into continental Europe was banned. These two bans resulted in litigation, one before the European Court of Justice and the other before the World Trade Organization (WTO) Appellate Body. Contrasting the different outcomes of litigation arising from similar cases highlights the effect of the different decisionmakers in these cases.
{76} SUBJ MATTER: COMMERCIAL
{86} SUBJ MATTER: FARM
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L

Donald McRae, *The Negotiation of the 1999 Pacific Salmon Agreement*, 27 CAN.-U.S. L.J. 267 (2001).
The negotiation of the 1999 Pacific Salmon Agreement involved provincial, state, tribal, industry, and environmental interests. Two environmental changes related to the conservation of a particular stock of fish prompted the need for a new agreement between the parties. Thus, conservation became

the focus of the negotiation. Although there were a few initial procedural difficulties, these were resolved by recognizing the dynamics of the situation. Ultimately, a satisfactory resolution was reached through cooperation and the agreement has been working well thus far.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Robert Meade, *The Value of Employment Arbitration*, CORP. COUNS., Feb. 2001, at A3.
This Article argues that mandatory arbitration clauses in employment contracts are beneficial. Both the employee and the employer benefit from arbitration or mediation because both sides save time and costs. Employers must assure that their arbitration system is fair and that employees have notice of it. If this is done properly, then the employer/employee relationship is strengthened, rather than destroyed, by a conflict at work.
{92} SUBJ MATTER: INT'L

Carrie Menkel-Meadow, *And Now a Word About Secular Humanism, Spirituality, and the Practice of Justice and Conflict Resolution*, 28 FORDHAM URB. L.J. 1073 (2001).
This Article focuses on the sources of our moral values, spirituality, a sense of communion or connection, and how values derived from various sources of "secular humanism" inform legal practices. The Author defines "secular humanism" and explains why it should be credited, as much as traditional sources of religious, moral, and spiritual learning, with providing informative and inspirational tenets for legal practices. The Article also identifies some particular values that inform conflict resolution practice.
{151} ROLE OF LAWYERS
{138} ETHICS: GENERAL

Carrie Menkel-Meadow, *Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution*, 28 FORDHAM URB. L.J. 979 (2001).
This Article addresses the need for rules, regulations, and best practices so that alternative dispute resolution (ADR) is used "appropriately." The Author addresses four of the major ethical concerns in the practice of ADR—counseling about ADR (appeal for mandatory counseling), confidentiality (issues surrounding state and federal confidentiality regulations), conflicts of interest as well as conflicts of rules and laws (extent to which the same individual should be allowed to perform multiple roles as mediator and

advocate), and conciliation (encouraging people to be mediators, arbitrators, and advocates within the same practice units).
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Paul Steven Miller, *A Just Alternative or Just an Alternative? Mediation and the Americans with Disabilities Act*, 62 OHIO ST. L.J. 11 (2001).
Mediation is not appropriate for every kind of disability employment rights case. However, with procedural safeguards to ensure fairness, mediation has provided very significant results for resolving many Americans with Disabilities Act (ADA) claims. The Author details the unique issues that must be addressed to preserve fairness for workers with disabilities who are mediating their ADA claims. These issues include accessibility to the mediation process, confidentiality of medical information, diversity of mediator panels, and mediator training and etiquette.
{21} MED: RELATED PROCESSES—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{132} CONFIDENTIALITY

Jeffrey Mishkin, *Dispute Resolution in the NBA: The Allocation of Decision Making Among the Commissioner, Impartial Arbitrator, System Arbitrator, and the Courts*, 35 VAL. U. L. REV. 449 (2001).
This Article's focus is on dispute resolution in the National Basketball Association (NBA). The NBA has long been in the midst of endless litigation due to the amount of money involved in professional sports. The forums of NBA disputes and international arbitration application are closely examined and the Article stems from a speech made by the former chief legal officer of the NBA and current chief outside counsel.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

George J. Mitchell, *Negotiating for Peace in Northern Ireland, Speech at the Jackson H. Ralston Prize Ceremony (Oct. 20, 2000)*, 37 STAN. J. INT'L L. 163 (2001).
Former Senate Majority Leader George Mitchell delivered this speech regarding his duties as a mediator in the peace negotiations in Northern Ireland. Senator Mitchell speaks as to the political landscape that existed when he arrived, as well as the efforts he and various world leaders made to reach the historic agreement.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

Anthony Modd, Recent Development, Fraternal Order of Police, Colorado Lodge #19 v. City of Commerce City, 16 OHIO ST. J. ON DISP. RESOL. 425 (2001).
This case involved the adoption (via city charter) of an arbitration procedure for city contract grievances. The FOP challenged the charter amendment on the grounds that it was an unlawful delegation of legislative power to the arbitration board, in violation of the Colorado Constitution. The court found the provision constitutional, given that the arbitrators had sufficient connection to a politically accountable office, and that there were sufficient standards to moderate the discretion of the arbitration board.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

P. Landon Moreland & Colby B. Springer, *Celebrity Domain Names: ICANN Arbitration Pitfalls and Pragmatic Advice*, 17 COMPUTER & HIGH TECH. L.J. 385 (2001).
Most celebrity domain name disputes are now resolved under the Internet Corporation for Assigned Names and Numbers' (ICANN) Uniform Dispute Resolution Policy (UDRP), which requires that a domain name be registered in bad faith, be "identical or confusingly similar" to complainant's trademark, and that the registrant must have no "rights or legitimate interests" in the name to warrant transfer or cancellation. Criticized for not being properly applied, the UDRP will likely be reformed to exclude celebrity domain name disputes. Therefore, practitioners who wish to take advantage of the quick and cost effective means of recovering a celebrity domain name under the UDRP, should take action before such reform.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Linda G. Morrissey & Vickie S. Brandt, *Community Sentencing in Oklahoma: Offenders Get a Second Chance to Make a First Impression*, 36 TULSA L.J. 767 (2001).
This Article discusses the passage of the Oklahoma Community Sentencing Act of 1999, which gave judges in Oklahoma a new sentencing option. Various alternative individualized punishment and treatment options are made available through a criminal justice partnership between the public and private sectors. The Author concludes that this highly supervised alternative to incarceration gives nonviolent offenders a viable opportunity for self-help, while remaining in the community.
{82} SUBJ MATTER: CRIMINAL

Kenneth J. Mosk & Tom Ginsburg, *Evidentiary Privileges in International Arbitration*, 50 INT'L & COMP. L.Q. 345 (2001).
This Article is a broad survey of the definitions and types of testimonial and evidentiary privileges in the United States and several international jurisdictions. The Author ultimately concludes that international arbitrators should defer to good faith claims of evidentiary and testimonial privilege.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Linda Mulcahy, *The Possibilities and Desirability of Mediator Neutrality—Towards an Ethic of Partiality*, 10 SOC. & LEGAL STUD. 505 (2001).
A neutral judge has been central in the long standing adjudication process. Mediation, however, is an alternative to adjudication. Therefore, as opposed to adjudication, a neutral stance taken by a mediator may exacerbate existing inequalities between parties and thereby promotes injustice. Thus, it is best that mediators develop an ethic of partiality rather than continue this injustice.
{21} MED: RELATED PROCESSES—GENERAL
{114} 3D PARTY: PRACTICE OF LAW

Melinda M. Munro, *Worried About the Guardianship Legislation? Why Not Try Mediation?*, 59 ADVOC. 255 (2001).
This Article, published by the Vancouver Bar Association, provides an overview of the Representation Agreement Act, Adult Guardianship Act, and Health Care (Consent) and Care Family (Admission) Act from a mediation perspective. It looks at this new legislation and provides insight into how mediation can be a useful tool in implementing these acts. The use of mediation can help to provide structure and flexibility when trying to make difficult decisions regarding the life of an incapable adult.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{144} LEGISLATION
{151} ROLE OF LAWYERS

Elizabeth H. Murphy, *Arbitration At Work*, 24 LOS ANGELES LAW., Nov. 1, 2001, at 26.
This Article provides discussion of recent California and U.S. Supreme Court jurisprudence construing the enforceability of mandatory arbitration agreements, including extended discussion of the California Supreme Court's recent decision in *Armendariz v. Foundation Health Psychare Services, Inc.* It asserts that both of these Supreme Courts have endorsed mandatory employment arbitration agreements so long as they provide protection for

employees' due process rights and also discusses issues not answered in these recent decisions.
{81} SUBJ MATTER: CORPORATE
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

William P. Murphy, *Positive Use of "Known Uncertainty"*, 24 PA. L. WKLY. 22 (2001).
This Article discusses the advantages of an appellate mediation program. It discusses the uncertainty of outcomes in appellate cases, and what mediation can bring to the table. It also looks at the mediation program established by the U.S. Court of Appeals for the Third Circuit. It points out the benefits of this program, such as how mediation can help to slow down the pace of the appellate process, which can sometimes overwhelm participants, and also how mediation can help to reduce costs.
{133} COURT REFORMS

Fiona Myers & Fran Wasoff, *Meeting in the Middle: A Reply to Scoular and Irvine*, 14 SCOTS L. TIMES 128 (2001).
In this Article, Myers and Wasoff defend their previous study and respond to the criticisms issued by Scoular and Irvine. They urge that their prior research was designed only to complement other recent studies and accept the need for other studies to reinforce valuable areas of mediation practice. They additionally claim that the criticisms previously offered were in response to a dislike of their work's result rather than to the method utilized.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{151} ROLE OF LAWYERS

Andrea L. Myers, *Mandatory Arbitration of an Employee's Statutory Rights: Still a Controversial Issue or Are We Beating the Proverbial Dead Horse?*, 2001 J. DISP. RESOL. 145.
The U.S. Supreme Court has delineated a two prong test to determine when judicial remedies for statutory rights may be waived. First, a court must see if Congress intended to preclude a waiver of such rights for the statute at issue. Second, the court must determine if such rights were explicitly waived in the agreement. In *Penn v. Ryan's Family Steakhouse*, the district court failed to look at the legislative history of the Americans with Disabilities Act (ADA) and determined that judicial remedies for ADA claims could be waived. The legislative history and purpose of the ADA clearly indicate that Congress did not intend for ADA claimants to waive such rights. In order to protect such claims from being denied judicial remedies, Congress should be more explicit in the language of the ADA.

{133} COURT REFORMS
{144} LEGISLATION

Tina Nabatchi & Lisa B Bingham, *Tranformative Mediation in the USPS REDRESS Program: Observations of ADR Specialists*, 18 HOFSTRA LAB. & EMP. L.J. 399 (2001).
These Authors begin by defining the transformative model of mediation and discussing the widespread implementation of a mediation program for the U.S. Postal Service. The Article analyzes the tranformative mediation program "at work" as a qualitative study and a process evaluation, focusing particularly on how the Postal Service model reflects transformative mediation processes. Further, the analysis suggests a practical application for researchers and practitioners in the field of mediation.
{21} MED: RELATED PROCESSES—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

James A.R. Nafzinger, *Arbitration and the Rights and Obligations in the International Sports Arena*, 35 VAL. U. L. REV. 357 (2001).
This Article explores the use of arbitration in disputes related to international sports competitions. The Article explores the role of the Court of Arbitration of Sport (CAS) and the American Arbitration Association. As the Article explains, many of the disputes brought to these tribunals involve the eligibility of athletes on the eve of a sanctioned sports competition. The Article also addresses the problems of using arbitration in the sports setting. *Lindland v. USA Wrestling* is discussed in addition to some U.S. Court of Appeals for the Seventh Circuit opinions.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

James A.R. Nafziger, *Making Choices of Law Together*, 37 WILLAMETTE L. REV. 209 (2001).
The Author proposes the use of mandatory, court-supervised mediation to resolve choice-of-law disputes rather than the complex and often inconsistent common law rules judges currently use. The Jonsen Matrix, developed to aid the resolution of ethical dilemmas in the healthcare field, would be a suitable model on which to base the more collaborative approach.
{133} COURT REFORMS

Judith Nallin, Lopresti v. Lopresti, N.J. L.J., January 14, 2002, at 80.
This digest of a case details a recent trial court decision regarding whether the arbitrators must, as a matter of law, set forth findings for their decision to award an amount of alimony. The arbitrators are not required by Faherty to provide their findings as to needs of the receiving party, but once they chose

at their discretion to do so, they must provide findings as to the payor's ability to pay. However, a defendant cannot wait until the arbitrators have ruled to request the findings.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Guy Nelson, *The Unclear "Clear and Unmistakable" Standard: Why Arbitrators, Not Courts, Should Determine Whether a Securities Investor's Claim Is Arbitrable*, 54 VAND. L. REV. 591 (2001).
Criticizing the U.S. Supreme Court's "clear and unmistakable" standard, the Author argues that arbitrators, rather than courts, should have the responsibility of determining arbitrability in securities disputes. The Author proposes that arbitrators should use a common law contracts approach to interpreting arbitration clauses—preserving the federal policy favoring arbitration over litigation and reflecting the clear and unmistakable intention of having arbitrators determine arbitrability. Otherwise, parties are relegated to entering into costly litigation to determine whether arbitration is available.
{106} SUBJ MATTER: SECURITIES
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{133} COURT REFORMS

Carroll E. Neesemann, *Manifest Disregard Comes to New York Law*, N.Y. L.J., Jan. 18, 2002, at 1.
The Author provides a discussion of the "manifest disregard" (of law) that can provide for the vacation of an arbitral award. The Author states that In re Warburg offers a new rule to New York courts reviewing arbitration decisions by holding that an arbitrator cannot totally ignore a "straightforward principle of law" that would apply to the situation—the arbitrator must consider the principle. But, the award will not be overturned if applied incorrectly, or not applied at all, so long as the arbitrator was not compelled by federal law to apply the principle. Therefore, arbitration decision review in New York courts is based more on arbitrator misconduct than the merits.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Dorothy Wright Nelson, *ADR in the Federal Courts—One Judge's Perspective: Issues and Challenges Facing Judges, Lawyers, Court Administrators, and the Public*, 17 OHIO ST. J. ON DISP. RESOL. 1 (2001).
Judge Dorothy Wright Nelson discusses alternative dispute resolution (ADR) in the context of federal courts. She first argues that federal court-annexed ADR is beneficial. Second, Judge Nelson gives a brief history of federal court ADR. Third, issues and concerns about federal court ADR are discussed, such as its purpose and evaluation, in-house ADR models, and

court ADR overlegalization. Finally, Judge Nelson gives an overview of ADR in the U.S. Court of Appeals for the Ninth Circuit.
{133} COURT REFORMS

Andrew D. Ness, *The Revised Uniform Arbitration Act of 2000*, CONSTRUCTION LAW., Fall 2001, at 35.
The Article focuses on the Revised Uniform Arbitration Act of 2000 (RUAA) and explains how it differs from the Uniform Arbitration Act of 1955 (UAA) with respect to determination of arbitrability, specification of waivable and nonwaivable provisions, appellate review of arbitration awards, consolidation of arbitration proceedings, discovery, and available remedies. The Author does not believe the RUAA is a bold effort to expand the horizons of arbitration, but concedes that it does address most of the key deficiencies in the UAA.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Barbara Nilva Nevin, *Resolve Fee Disputes Efficiently Through Arbitration*, 70 HENNEPIN LAW. 22 (2001).
This Article discuss the types of mediation and arbitration processes available for the resolution of fee disputes arising out of the attorney client relationship as well as disputes between opposing counsels. The Author notes that the majority of fee dispute resolution programs are voluntary, but that courts have upheld the constitutionality of mandatory programs. The Author also describes the fee dispute resolution process in Hennepin County, recognizing that the process is underutilized.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER

Lawrence W. Newman, *International Arbitration Unfinished Business*, N.Y. L.J., Apr. 3, 2001, at 3.
Although the field of international arbitration has grown considerably in the past several years, certain challenges prevent further growth and widespread acceptance of international arbitration as a significant means for resolving international business disputes. Such challenges include the "absence of modern and effective arbitration-related legislation," and the "absence of predictability" in the selection process of arbitrators and the proceedings of the arbitration.
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Paul Peter Nicolai, *Minimizing Disputes in B2B E-Commerce Transactions*, CORP. COUNS., Nov. 1, 2001, at A3.
This Article discusses what business to business electronic commerce transactions are, the types of disputes that commonly arise in these types of transactions, and some of the ways in which these disputes have been resolved when they have arisen. It offers a number of suggestions for minimizing and resolving more effectively disputes in this area, including discussion of the possible use of some of the techniques of alternative dispute resolution as a possible means to achieving this end.
{134} DISPUTE PREVENTION
{81} SUBJ MATTER: CORPORATE

Paul Peter Nicolai, *Rethinking Employment Law Strategies (Part 2)*, 56 DISP. RESOL. J. 53 (2001).
This Article discusses the importance of a successful employment dispute resolution program and the need for it to be flexible. The Author discusses the *Circuit City Stores, Inc. v. Adams* decision at great length and the advantages of employment arbitration, noting the issues that arise when that process is implemented. He also discusses the important role employee handbooks play in the employment relationship.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Vincent O. Orlu Nmehielle, *Enforcing Arbitration Awards Under the International Convention for the Settlement of Investment Disputes*, ANN. SURV. INT'L & COMP. L., Spring 2001, at 21.
Arbitration has become an immensely popular medium for resolving international economic disputes. The international community has attached great importance to this mechanism in resolving investment disputes, which has led to the development of the International Convention for the Settlement of Investment Disputes (ICSID). The ICSID has established a center for the settlement of investment disputes, which implements the provisions of the ICSID convention. This Article addresses the broad question of enforcement of arbitral awards under the Convention and analyzes the attendant issues.
{92} SUBJ MATTER: INT'L

Sean F. Nolon, *Land Use Conflicts, Before Going to Court, Consider Using Mediators To Negotiate*, N.Y. L.J., Nov. 14, 2001, at 5.
This Article explains why the use of a mediator early in the conflict resolution process can help parties through the struggle that can follow an application for land use approval for a significant development project. The use of a mediator early on can avoid a long and costly process in addition to

considering the interests of the parties, which can produce lasting and satisfactory results.
{21} MED: RELATED PROCESSES—GENERAL

Elena Nosyreva, *Alternative Dispute Resolution in the United States and Russia: A Comparative Evaluation, Annual Survey of International & Comparative Law*, ANN. SURV. INT'L & COMP. L., Spring 2001, at 7.
This Article explores the issue of whether alternative dispute resolution is contrary to the civil law or civil law philosophy in European countries such as Russia. In Europe, there is no concept of alternative dispute resolution (ADR). As a result, the idea of ADR in Russia is unheard of. The Author of the Article argues that the Russian judicial system is overburdened today and thus ADR could be useful for providing cost-effective and quicker resolution of cases. The Author traces the development and experiences with ADR in the United States and considers some methods for developing ADR in Russia.
{92} SUBJ MATTER: INT'L

John B. O'Grady & Jennifer Schooley Stringer, *Final Regs. Approve Certain Changes in Grandfathered GST Trusts*, 28 EST. PLAN. 526 (2001).
This Article discusses how the Final Regulations specify modifications that may be made to a grandfathered generation-skipping trust without causing the trust to lose its GST tax-exempt status. The Authors analyze planning opportunities and pitfalls under the Regulations. The Article identifies which trusts have grandfathered GST status and the modifications that fall within the safe harbors of the final Regulations. The Authors view the new Regulations as an overall improvement, but caution that the numerous traps must be avoided.
{108} SUBJ MATTER: TAX
{104} SUBJ MATTER: REGULATORY
{144} LEGISLATION

Darynne L. O'Neal, *Clarifying the Intent of Congress: Are the Federal Arbitration Act's Venue Provisions Permissive or Mandatory?*, 2001 J. DISP. RESOL. 157.
In *Cortez Byrd Chips, Inc. v. John Harbert Construction Co.*, the U.S. Supreme Court laid to rest whether venue provisions in the Federal Arbitration Act (FAA) should be interpreted as permissive or mandatory. A number of courts have interpreted these provisions as being mandatory, therefore restricting confirmations of arbitration awards to the districts in which the awards were made. However, the Court found this interpretation

lead to absurd results and went against precedent. Thus, the mandatory interpretation of these provisions is now abrogated.
{133} COURT REFORMS
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Chris Ormond, *Joint Effort*, 145 SOLIC. J. 116 (2001).
This British Article discusses rent review arbitration. The basic thrust of the argument is that surveyors, acting as expert witnesses in the arbitration, need to work closely with the solicitors when preparing written submissions for the arbitrator. Working with the solicitors will help the surveyor get the point across in a more legalistic field. For example, if there is industry jargon that the arbitrator would not understand, the solicitor can help explain. The overall goal in working together is to make surveyors more effective in rent review arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{90} SUBJ MATTER: RENTAL HOUSING

Wayne Outten, *Negotiating Employment Agreements: An Employee Lawyer's Perspective*, 47 PRAC. LAW. 41 (2001).
This Article examines some of the forces driving the trend toward employment agreements, including golden handcuffs and restrictive covenants. The Article then discusses the role of the employee's attorney, including protecting the employee, identifying the issues, implementing negotiations when appropriate, and helping the client to understand the basic components of such an agreement, including renewal terms, job duties, salary, benefits, stock options, disability, retirement, termination, restrictive covenants, and dispute resolution provisions.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{151} ROLE OF LAWYERS

Lynlee Wells Palmer, Comment, *Trying It Again for the First Time: Judicial Treatment of Arbitral Decisions in Subsequent Title VII Cases*, 52 ALA. L. REV. 1077 (2001).
In *Alexander v. Gardner-Denver Co.*, the U.S. Supreme Court held that arbitration clauses in collective bargaining agreements did not bar employees from bringing employment discrimination claims under Title VII. The Court's decision was not so clear, however, in how much deference a court should give to an arbitrator's decision. This Article discusses the divergent views adopted by district courts for both the admission of such decisions as well as the weight to be afforded them.
{94} SUBJ MATTER: LABOR—DISCRIMINATION

William Park, *Arbitration and the Fisc: NAFTA'S "Tax Veto"*, 2 CHI. J. INT'L L. 231 (2001).
This Article examines NAFTA's provisions allowing fiscal authorities of host and investor countries to block arbitration to settle investment disputes when the expropriation claim includes "taxation measures." The Article also discusses when this "tax veto," or arbitration block, may occur and explores the possible risks of the future use of the "tax veto."
{108} SUBJ MATTER: TAX
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Young Duk Park & Parker H. Bagley, *WTO Dispute Settlement 1995–2000: a Statistical Analysis*, 4 J. INT'L ECON. L. 214 (2001).
This Article analyzes first six years of the World Trade Organization's (WTO) dispute settlement processes. The Article examines the participants, the mechanism utilized to resolve disputes, the use of appellate review, and the types of issues disputed. Tables summarize the provisions litigated according to the agreement category and a listing of matters by case number.
{76} SUBJ MATTER: COMMERCIAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L

Joseph H. Paulk, *Why Mediation Works*, 36 TULSA L.J. 861 (2001).
In this Article, Paulk discusses mediation as a popular alternative to litigation for clients and why this alternative works. Paulk concludes that mediation works because the parties trust the process and desire to reach a conclusion through a negotiated settlement.
{21} MED: RELATED PROCESSES—GENERAL
{132} CONFIDENTIALITY

Jan Paulsson, *Boundary Disputes into the Twenty-First Century: Why, How . . . and Who?*, 95 PROC. ANN. MEETING-AM. SOC'Y INT'L L. 122 (2001).
This Article focuses on some of the more important practical aspects of a boundary arbitration case. The Article provides a background of the ubiquitous nature of boundary disputes and the role they play in international relations. In addition, the Author addresses economic factors as catalysts for boundary disputes and provides provocative thought on the location of natural resources and how they play a role in states' claims to disputed territory.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Randall J. Peach, *Final Nonbinding Arbitration Decree Held To Trigger LAD Fee-Shifting,* N.J. L.J., Feb. 1, 2001, at 1.
The New Jersey Supreme Court decided that attorney's fees from arbitration will be decided post-arbitration, and prevailing plaintiffs are entitled to fees even if they receive relief in the settlement. This decision will force both sides to deal with the issue of fees up front. Plaintiffs' attorneys are happy because they will now get paid, but defense attorneys are skeptical and say that this is another reason not to consent to nonbinding arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Laura Pearlman, *California's Light Saver,* 23 AM. LAW. 30 (2001).
This Article provides a brief discussion about Michael Kahn, the Governor of California's on-call advisor and chief negotiator with the power utilities during that state's energy crisis. Mr. Kahn is also a practicing partner in a firm and believes he can solve the energy crisis.
{114} 3RD PARTY: PRACTICE OF LAW

Jacqueline Peel, *Giving the Public a Voice in the Protection of the Global Environment: Avenues for Participation by NGOs in Dispute Resolution at the European Court of Justice and World Trade Organization,* 12 COLO. J. INT'L ENVTL. L. & POL'Y 47 (2001).
As environmental NGOs have become more active and influential on an international scale, they increasingly participate in areas that were traditionally the sole province of sovereign states. This Article examines the effect of environmental non governmental organizations (NGO) both on disputes before the European Court of Justice and in the World Trade Organization Dispute Settlement Process. The Author describes both the benefits and drawbacks of NGO involvement in international fora and proposes criteria for future NGO participation.
{92} SUBJ MATTER: INT'L

Shoshana R. Pehowic, Recent Development, Floss v. Ryan's Family Steak Houses, Inc., 16 OHIO ST. J. ON DISP. RESOL. 419 (2001).
The Author reviews *Floss v. Ryan's Family Steak Houses, Inc.*, a recent decision on mandatory arbitration clauses by the U.S. Court of Appeals for the Sixth Circuit. The court held that in signing the arbitration agreement, neither employee had waived their right to bring an action in federal court. The Sixth Circuit joined a number of other federal circuits in extending the holding of *Gilmer v. Interstate/Johnson Lane Corp.*, which dealt with the Age Discrimination in Employment Act, to various other federal statutes.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

John F.X. Peloso & Stuart M. Sarnoff, *Whose Customer Is It? Issue Impacts Compulsory NASD Arbitration*, N.Y. L.J., Aug. 16, 2001, at 3.
National Association of Securities Dealers Rule 10301(a) requires, upon demand of the customer, arbitration of certain disputes between the customer and a member firm or an associated person. The ambiguity of the rule has been brought to light by the divergent opinions in two recent cases; the courts each addressed the question of when an investor is a "customer" of the member firm and made conflicting determinations. The Authors examine both cases and suggest textual alterations to the rule that would eliminate the ambiguity.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{106} SUBJ MATTER: SECURITIES

Tom Perrotta, *$5.7 Million Securities Arbitration Award Nullified*, N.Y. L.J., Oct. 17, 2001, at 1 (2001).
The Article discusses *UBS Warburg LLC v. Averbach, Pollak & Richardson, Inc.*, where the court threw out a $5.7 million arbitration award because the arbitrators involved refused to consider the applicable law when making their decision. The panel split two to one in favor of the settlement, with one arbitrator refusing to apply the applicable law and another refusing to even recognize.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Peter J. Comodeca, *Ready . . . Set . . . Mediate*, 56 DISP. RES. J. 32 (2001).
This guide for attorneys helps identify when mediation is necessary and also how to select a mediator. It discusses the need for a mediation clause to set guidelines for the mediation. The Article gives useful information about finding a mediator by evaluating biographies of potential mediators as well as alternative dispute resolution organizations. The Article gives factors to consider in selecting a mediator, such as skill in the processes of mediation and discusses pre-mediation considerations.
{21} MED: RELATED PROCESSES—GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Bennett G. Picker, *ADR: New Challenges, New Roles, New Opportunities*, 56 DISP. RESOL. J. 20 (2001).
The world of litigation is changing and lawyers need to change the way that they approach cases. In recent years, the meaning of "winning" in cases has changed. Rather than pursuing litigation and receiving a sum of money at great expense to all involved, a reconciliation and compromise might be best for all involved. Lawyers need to start thinking of alternative dispute resolution (ADR) solutions when they approach a case, and law schools need to start emphasizing ADR in their curriculum.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Michael Polkinghorne & Darren Fitzgerald, *Arbitration in South East Asia: Hong Kong, Singapore, and Thailand Compared*, 18 J. INT'L ARB. 101 (2001).
Over the last several years, Hong Kong, Thailand, and Singapore have brought forth their own versions of domestic and international arbitration procedures. These procedures and rules vary from traditional western models. In this Article, the Authors specifically focus on these three countries' international arbitration processes. They compare and contrast the three nations' systems, while pointing out the areas they feel to be of greatest significance.
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Jeffrey D. Pollack, *Limiting Public Policy in Reviews of Arbitration*, N.Y. L.J., Feb. 26, 2001, at 1.
The Article discusses two cases that demonstrate courts' reluctance to review arbitration awards. In particular, alleging that there is a violation of public policy will not be enough for court review. The first case discussed is the recent U.S. Supreme Court decision where an employee was reinstated twice even though the company claimed her employment would be against public policy.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Rebecca Porter, *High Court Upholds Binding Arbitration for Employment Contracts*, 37 TRIAL, July 2001, at 86.
This Article discusses the recent U.S. Supreme Court ruling in *Circuit City Stores, Inc. v. Adams* that the Federal Arbitration Act's binding arbitration clauses apply to employment contracts. The Author provides a brief synopsis of Justice Kennedy's decision and details the reasoning the Court relied upon in deciding the case. Additionally, the Author provides summaries of

arguments opposing the ruling to give readers a complete picture of the decision.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Richard A. Posthuma & Maris Stella Swift, *Legalistic vs. Facilitative Approaches to Arbitration: Strengths and Weaknesses*, 52 LAB. L.J. 173 (2001).
Within the backdrop of employment disputes, this Article examines the two primary methodologies utilized by advocates during arbitration. These methodologies are the legalistic approach, where the advocate considers the arbitration as an extension of the adversarial process, and the facilitative approach, where arbitration is seen as an informal opportunity for the parties to air their grievances. By plotting the possible combinations of these approaches, the Authors classify advocates into one of five different categories: adversarial, disruptive, cooperative, protolcolic, and strategic. The Authors suggest that strategic advocates will achieve the best results and disruptive advocates the worst.
{151} ROLE OF LAWYERS

Michael Pryles, *Multi-Tiered Dispute Resolution Clauses*, 18 J. INT'L ARB. 159 (2001).
This Article deals with issues involving multi-tiered dispute resolution clauses. The Author defines a multi-tiered dispute resolution clause as a contract clause, which provides for distinct stages involving separate procedures for disputes. The Article addresses the important issues concerning the enforceability of a multi-tiered dispute resolution clause. Additionally, this Article uses arguments posed in an International Chamber of Commerce (ICC) arbitration to illustrate the construction difficulties, which can arise in a multi-tiered clause.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Martin Quinn, *ADR: Complex and Online and Mold Cases*, 21 CAL. LAW. 29 (2001).
In a toxic tort case, some claimants may demand compensation for serious injuries or property damages although other claimants may need only medical monitoring, ongoing testing of soil or water contamination, or nominal damages. The most severe claims may require a series of specially tailored mediations, and a carefully designed formula will take care of the others. A settlement master is the best way to manage such claims, report to courts with a panel or neutral, and coordinate with a claim administrator. A neutral can avoid conflicts of interest and save time and money.

{149} QUALITY CONTROL
{114} 3RD PARTY: PRACTICE OF LAW

Burgess J.W. Raby & William L. Raby, *The Doctor and the Collectively Bargained VEBA*, TAX NOTES, Jan. 7, 2002, at 67.
This Article provides a discussion regarding the deductibility of an employer's contribution to a VEBA Trust. Through the use of a hypothetical, the possible tax consequences and risks are analyzed, discussing the ethical dilemmas facing tax advisors who suggest that clients establish benefit plans providing deductions that may be "too good to be true."
{108} SUBJ MATTER: TAX

Bruce W. Radford, *The Rules of the Grid: Transmission Policy and Motives Behind It*, 139 PUB. UTIL. FORT. 13 (2001).
The Federal Energy Regulatory Commission's (FERC) plan to restructure the electric transmission structure was delayed due to an inability to bring together the many interests involved. Further mediation plans have already begun; however, a fundamental rift between those favoring a limited role for regional transmission organizations as opposed to those favoring a heavier role has yet to be mended.
{103} SUBJ MATTER: PUBLIC UTILITIES
{102} Public Policy
{21} MED: RELATED PROCESSES—GENERAL
{104} SUBJ MATTER: REGULATORY

John Rapisardi, *Dueling Policies: Bankruptcy Code Versus Federal Arbitration*, N.Y. L.J., Nov. 15, 2001, at 3.
This Article discusses cases addressing the conflict of pro-arbitration attitudes under the Federal Arbitration Act with the Federal Bankruptcy Code's grant of jurisdiction to bankruptcy courts to preside over bankruptcy matters.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Frederick D. Rapone Jr., Comment, *This Is Not Your Grandfather's Labor Union—or Is It? Exercising Section 7 Rights in the Cyberspace Age*, 39 DUQ. L. REV. 657 (2001).
This Comment explores the traditional analysis of employee organization and workplace communication and its relationship with the assertion of Section 7 rights. The Comment also discusses the use of e-mail in the workplace and its role vis-à-vis employee organizations. The Author concludes that it is

unclear whether an employer should be able to prohibit use of its e-mail system as a consequence of the distribution-like qualities of e-mail.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Michael E. Ratner, Note, *In the Aftermath of* Troxel v. Granville*; Is Mediation the Answer?*, 39 FAM. CT. REV. 454 (2001).
When the U.S. Supreme Court held, in *Troxel v. Granville*, that a Washington statute allowing mandated grandparent visitation through family courts was unconstitutional, the decision said nothing about alternatives to litigation in child visitation disputes. This Note surveys several statutes regarding grandparent visitation and examines the burdens these statutes place on disputing parties. Mediation is suggested as an alternative to litigation in grandparent visitation disputes, and mediation programs are examined in the states that use them for resolving grandparent visitation disputes.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Remedies and Challenges: The ACAS Arbitration Scheme for Unfair Dismissal, Part 2, 672 INDUS. REL. L. BULL. 2 (2001).
As a discussion of the ACAS unfair dismissal arbitration scheme, this Article outlines the form of awards, the available remedies, and considers the "very limited circumstances" in which arbitrators' decisions may be challenged.
{92} SUBJ MATTER: INT'L

Richard C. Reuben, *Avoiding Extremes*, 21 CAL. LAW. 23 (2001).
Three arbitration cases decided during the 2001–2002 U.S. Supreme Court term have effected mandatory arbitration. The cases are *Circuit City Stores, Inc. v. Adams*, *Green Tree Financial Corp.-Alabama v. Randolph*, and *Eastern Associated Coal Corp. v. United Mine Workers*. These cases show that the Court appears continue following a more cautious path to arbitration, less susceptible to any extremes.
{133} COURT REFORMS
{114} 3RD PARTY: PRACTICE OF LAW
{127} REQUIREMENTS: MANDATE TO USE

Douglas C. Reynolds & Doris F. Tennant, *Collaborative Law—An Emerging Practice*, BOSTON B.J., Nov. 1, 2001, at 12.
This Article discusses the use of collaborative law, as being explored by a group of lawyers throughout the United States. Collaborative law involves lawyers and parties engaging in transparent, face-to-face negotiations intentionally aimed at reaching an agreed resolution of the dispute through

cooperative practices in place of adversarial ones. The Article addresses the history and development of collaborative law, ethical considerations, and the desire to bring application of the process to business dispute resolution.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Michael Riccardi, *Constructive Trust Requested in Same-Sex Property Dispute*, N.Y. L.J., June 5, 2001, at 1.
In order achieve a fairer disposition of property held by a lesbian couple who ended their relationship, a New York judge decided to impose a constructive trust provided either woman could prove the four factors needed to establish a constructive trust based on a confidential relationship. Those factors are a confidential relationship, a promise, reliance on the promise, and unjust enrichment.
{102} SUBJ MATTER: PUBLIC POLICY

Christopher Richards, *Allowing Blame and Revenge into Mediation*, 31 FAM. L. 775 (2001).
This Article discusses how anger, fear, and all the negative emotions experienced by separating couples play a part in divorce mediation. The Author explains that without acknowledging the emotions, the parties will not feel understood. Without that understanding and sense of knowing that their emotions are normal, the difficulty of reaching an agreement increases. The Author suggest that a mediator should not shy away from letting the emotions into the mediation; he or she should simply not let the emotions take control of the mediation.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Rene L. Rimelspach, *Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program*, 17 OHIO ST. J. ON DISP. RESOL. 95 (2001).
Courts should both offer and promote family court mediation. First, the arguments against court-connected mediation programs in consideration of domestic violence are discussed. Second, the arguments in favor of court-connected mediation programs, even in the presence of domestic violence, are analyzed. Third, the Author explores how a court-connected mediation program that simultaneously serves and protects could be created with the establishment of safeguards before, during, and after the mediation process.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Richard B. Risk Jr., Comment, *Structured Settlements: The Ongoing Evolution from a Liability Insurer's Ploy to an Injury Victim's Boon*, 36 TULSA L.J. 865 (2001).
The Author asserts that the structured settlement is an integral part of the negotiation process in settling various tort type claims. This Comment discusses why structured settlements are popular and thoroughly outlines the origin and evolution of the concept. The Author concludes that the future of the structured settlement is bright for injury victims.
{110} SUBJ MATTER: OTHER TORTS

Gary Roberts, *Resolution of Disputes in Intercollegiate Athletics*, 35 VAL. U. L. REV. 431 (2001).
This Article examines the procedures used (including the culture of collegiate sports) by the National Collegiate Athletic Association (NCAA) to interpret its rules and resolve its disputes. The Article explains that an elaborate system of internal processes and committees provide great protections to the involved parties. The procedures and regulating bodies are outlined in detail.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Charity Robl, Recent Development Note, Circuit City Stores, Inc. v. Adams, 17 OHIO ST. J. ON DISP. RESOL. 219 (2001).
This Recent Development Note discusses the U.S. Supreme Court case of *Circuit City Stores, Inc. v. Adams*. Employer arbitration agreements included in employment contracts will not be subject to attack because the Court held that the Federal Arbitration Act (FAA) covers binding arbitration clauses in employment contracts, even if the clauses require arbitration of statutory claims. The Court also held that the FAA covers employment contracts of all workers other than transportation workers.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Danielle N. Rodier, *City Must Negotiate Elimination of FOP Positions, Justices Decide but Supreme Split Finds Arbitrator Shouldn't Have Decided New Issues at Hearing*, 24 PA. L. WKLY. 9 (2001).
An arbitrator lacks jurisdiction to add an additional issue to the arbitration when a party to the arbitration fails to raise the issue before the arbitration proceedings begins and the opposing party does not consent to the arbitration of the additional issue as clearly provided by the American Arbitration Association.

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Danielle N. Rodier, *Commonwealth Court Allows Different Units for Unionized Court Employees: Employees 'Essential' to the Court's Operation in Separate Bargaining Unit as Others*, 24 PA. L. WKLY. 6 (2001).
This Article discusses the distinction made in *Montgomery County v. Pennsylvania Labor Relations Board* between the employees of offices that are necessary to the functioning of the courts in Montgomery County and the employees from offices that are not vital to the court's operation. The dispute arose over who should be part of a court-appointed bargaining unity, which is made up of employees who are in an employee-employer relationship with the judges.
{93} SUBJ MATTER: LABOR—GENERAL

Danielle N. Rodier, *Egregious Conduct Negates Right to Arbitration*, 24 PA. L. WKLY. 1 (2001).
This Article examines a Pennsylvania Common Please Court decision suggesting that an arbitration clause was not binding when one party was accused of seriously egregious conduct. In this case, the defendant had allegedly embezzled more than one million dollars from the plaintiff, and this behavior had forced a revocation of the agency relationship, thereby waiving the right of the defendant to arbitrate.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Danielle N. Rodier, *No Express Authority in Contract, No Class Action Status*, 24 PA. L. WKLY. 6 (2001).
A Pennsylvania judge in the Delaware County Common Pleas Court ruled that an arbitration clause must expressly provide for class arbitration or plaintiffs will have no statutory right to bring a class action. This ruling was made in the case *Lytle v. Citifinancial Services, Inc.*, which involved a loan secured by a mortgage. The court also found that the state's usury statute does not allow class action suits.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Danielle N. Rodier, *Proposed Changes to Arbitration Rules: Evidentiary Rules Relaxed on Appeal When Damages Limited*, 24 PA. L.J. 1 (2001).
One change proposed by the commonwealth of Pennsylvania's court rules committee would relax the rules of evidence in arbitrations if parties agree to recover no more than $15,000 and plaintiffs provide at least forty-five days notice of intention to use arbitration. This rule would attempt to make modest claims less expensive and easier to appeal. Some lawyers feel this change to Rule of Civil Procedure 1311 would be more effective with a higher cap of $50,000 —the amount of the cap on arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Theodore O. Rogers, Jr., *The Procedural Differences Between Litigating in Court and Arbitration: Who Benefits?*, 16 OHIO ST. J. ON DISP. RESOL. 633 (2001).
Recognizing the current theoretical arguments regarding the benefits of mandatory arbitration, the Author discuses the practical differences between arbitration and court litigation in the employment dispute arena. By evaluating the benefits and costs to employers and employees at five stages in the dispute process, the Author concludes that arbitration contains benefits for employees. The Author also finds that despite evidence showing the success of employees in arbitration, employers chose arbitration as a way of predicting costs.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Paola Ronfani, *Children, Law, and Social Policy in Italy*, 15 INT'L J.L. POL'Y & FAM. 276 (2001).
This Article looks at the current efforts being made throughout Italy to deal with post-divorce family situations. Although Italy has more two-parent households than any other European nation, the divorce rate is steadily on the rise and this has led to challenges involving custody issues. The Article suggests that, althoug mediation has been key in dealing with the fallout of divorces, Italy is currently struggling with how to structure mediation processes to insure that a paternalistic view of family justice, more focused on judging social relations than human rights, is avoided.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{92} SUBJ MATTER: INT'L

Allan Rosas, *Implementation and Enforcement of WTO Dispute Settlement Findings: an EU Perspective*, 4 J. INT'L ECON. L. 131 (2001).
After the first five years of World Trade Organization (WTO) dispute resolution, the European Union (E.U.) has generally perceived the system as functioning well, although clearly seeing room for improvement. Improvements suggested include an alternative to enhance implementation and enforcement and strengthening the rights of private parties. A number of procedural improvements are suggested, including redesign of deadlines, making the hearing panels permanent bodies, and altering the structure and function of the appellate body.
{76} SUBJ MATTER: COMMERCIAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L

Jonathan Rosenberg, *Reviewing Standards for Judicial Relief in ADR*, N.Y. L.J., Jan. 16, 2002, at 1.
This Article discusses conflicting New York case law regarding N.Y. C.P.L.R. 7502(C), which allows a party to initiate a special proceeding to obtain an attachment or preliminary injunction in aid of arbitration. Although caselaw appears to slightly favor the traditional three-part equitable standards for granting an injunction, courts also apply a test based on whether an arbitration award can be rendered "ineffectual." The Article urges practitioners to be aware of the conflict in practice.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Deborah Rosenthal & Morgan Azimi, *Scammed? How Arbitration can Lead to the Courtroom It's Supposed To Avoid,* 21 CAL. LAW. 40 (2001).
An arbitrator may have a potential conflict with a party and not disclose it. Under California law, which favors arbitration as binding but gives virtually no guidance to arbitration proceedings, arbitration may not be fair. The Authors argue that plaintiffs with repeat arbitration business may form connections with arbitrators. Because it is difficult to police this problem and courts are not prone to act against an arbitration settlement agreement, the Authors conclude that arbitrators need to be regulated.
{147} POWER IMBALANCE
{114} 3RD PARTY: PRACTICE OF LAW

Alan Miles Ruben, *The Top Ten Judicial Decisions Affecting Labor Relations in Public Education During the Decade of the 1990's: The Verdict of Quiescent Years,* 30 J.L. & EDUC. 247 (2001).
This top ten list concludes that there has been very little impact on labor relations in public education. This Article includes a discussion of the following cases: *Baltimore Teachers Union v Mayor and City Council of Baltimore*; *Leslie Cowen v Strafford R-VI School District; Hudson v. Chicago Teachers Union*; *Taxman v. Board of Education of the Township of Piscataway*; *Knox County Education Association v. Knox County Board of Education*; *The Central City Education Association I.E.A./N.E.A. v. The Illinois Educational Labor Relations Board*; *Central State University v. American Association of University Professors, Central State University Chapter*; *South Jersey Catholic Teachers Organization v. St. Teresa of the Infant Jesus Church Elementary School*; *New York State Employment Relations Board v. Christ the King Regional High School*; and *Jefferson County Board of Education v. Jefferson County Education Association.*
{83} SUBJ MATTER: EDUCATION
{93} SUBJ MATTER: LABOR—GENERAL

Anthony Michael Sabino, "Circuit City" *Marks Leap Forward For Arbitration,* N.Y. L.J., Apr. 17, 2001, at 1.
This Article reviews the U.S. Supreme Court's decision in *Circuit City Stores, Inc. v. Adams*, holding that arbitration clauses in employment agreements are enforceable despite limiting language in the Federal Arbitration Act. The Author's interpretation is that arbitration is here to stay, it is broadly enforceable as an alternative to litigation, and no rights or protections are lost in its nonjudicial forum.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{93} SUBJ MATTER: LABOR—GENERAL

Anthony Michael Sabino, *Ruling Promotes Arbitration, Warns of Costs,* N.Y. L.J., Jan. 5, 2001, at 1.
This Article reports on the U.S. Supreme Court's decision in *Green Tree Financial Corp.-Alabama v. Randolph*, which compels arbitration even though the respondent claimed that the unknown costs of the arbitral process prevented her participation. The Author emphasizes the Court's holding that the issue of alternative dispute resolution costs and expenses was insufficient to void the agreement to arbitrate.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Judith B. Sadler, *ADR and the NLRA: Will the Board Defer?*, 16 OHIO ST. J. ON DISP. RESOL. 571 (2001).
Professor Sadler discusses the use of alternative dispute resolution (ADR) by the National Labor Relations Board. Specifically, she examines the Board's policy of opposing the use of mandatory arbitration in private employer-employee relationships, where the employee is not represented by a union. She recommends that the Board drop this opposition to mandatory arbitration, while maintaining a right to review the proceedings.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Teresa B. Salamone & Michaela Keet, *Getting It Done—A Process Design for Environmental Negotiations*, 16 NAT'L RESOURCES & ENV'T 122 (2001).
In this Article, the Authors present an alternative methodology for the negotiation of disputes. Instead of entering into negotiations with a firm position on how the dispute should be resolved, the Authors suggest the parties first focus on their "interests" (i.e. their goals, concerns, fears, and hopes). Moreover, only after each side has disclosed these "interests" to the other may the parties proceed to the ultimate resolution of the dispute. The Authors claim that the utilization of this methodology can help prevent future negotiations from stalling and can even help jump-start existing negotiations that are currently bogged-down.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

Paul Salvatore, *This Is the Year That Will Decide the Future of Arbitration*, CORP. COUNS., Feb. 1, 2001, at 50.
This Article discusses three U.S. Supreme Court decisions that will decide the future of mandatory arbitration in the employment setting. *Eastern Associated Coal v. United Mine Workers* reaffirmed the finality of arbitral awards, even if they might violate public policy. At the time of this Article, the other two cases, *Circuit City Stores, Inc. v. Adams* and *Green Tree Financial Corp.-Alabama v. Randolph* had not been decided. Employers are sometimes disadvantaged by arbitration awards in that there is generally no appeal. However, the Author supports the idea that a few bad decisions are worthwhile, because overall, arbitration awards are cheaper and more beneficial to the employer.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Brian Sampson, Note, *Staying the Enforcement of Foreign Commercial Arbitral Awards: A Federal Practice Contravening the Purpose of the New York Convention*, 26 BROOK. J. INT'L L. 1839 (2001).
The accession of the United States to the New York Convention guidelines governing the grant of stays of enforcement of international arbitral awards has not been uniformly applied in U.S. federal courts. Consequently, the usual result is the grant of an automatic stay. A survey of recent cases emphasizes the need for a uniform standard governing the grant of stays.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Karon A. Sasser, Comment, *Freedom To Contract for Expanded Judicial Review in Arbitration Agreements*, 31 CUMB. L. REV. 337 (2000–2001).
The Federal Arbitration Act provides for the judicial review of arbitration decisions in only very limited circumstances. Private parties, however, have attempted to overcome these limitations by expressly providing for judicial review in the arbitration agreement itself, just as they specify the other particulars of the arbitration proceeding. The Author explores the various policy considerations regarding an individuals' freedom to contract versus Congress' role of setting boundaries of the judicial system.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

David G. Savage, *Back to Work: Job Bias Is at Issue in Three Cases on the Court's Expanded Docket*, A.B.A. J., May 2001, at 30.
This Article reviews some of the cases that were scheduled to appear before the U.S. Supreme Court beginning in October, 2001. The Author identifies the issues and implications of the large number of employment questions before the Court. Included in these are issues of workers with repetitive stress injuries, the role of race in hiring determinations, credit reporting, and the continuing problem of arbitration agreements, and jury trials under *Circuit City Stores, Inc. v. Adams*.
{94} SUBJ MATTER: LABOR—DISCRIMINATION

David G. Savage, *Justice in Job Disputes: With Mandatory Arbitration OK'd, Focus Shifts to Making Sure It's Fair*, A.B.A. J., Oct. 1, 2001, at 30.
Lawyers are now debating the inherent fairness in the arbitration process following the U.S. Supreme Court's recent decision that employers may require arbitration of all employment discrimination claims. This Article maintains that there are many unresolved questions, including costs, fees,

discovery, class actions, and punitive damages that the Court will have to address in the near future.
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Erik G.W. Schafer, *IP and ADR in Germany*, CORP. COUNS., June 1, 2001, at A27.
Recently, Germany has jumped on the alternative dispute resolution (ADR) movement, especially in the area of intellectual property (IP). By adopting the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Model into the Civil Code, Germany is encouraging the adoption of ADR as a replacement to courts and conciliation boards traditionally used in IP disputes. The German changes to the model code result in a more efficient process providing several advantages. Generally, the use of ADR in IP disputes is increasing.
{92} SUBJ MATTER: INT'L
{128} REQUIREMENTS: STATUTORY OR RULES

David J. Scheffer, *A Negotiator's Perspective on the International Criminal Court*, 167 MIL. L. REV. 1 (2001).
This Article is an edited transcript of a lecture delivered at the Judge Advocate General's School by the former Ambassador-at-Large for War Crimes Issues. Scheffer discusses his support for the U.S. decision to sign the treaty creating the International Criminal Court (ICC). He advocates the U.S. taking the lead in developing a credible court and advancing the U.S. commitment to uniform international justice. Scheffer believes fears of the ICC are misplaced and that justice serves U.S. interests and humanity.
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

Robert C. Scheinfeld & Parker H. Bagley, *Domain Name Litigation and Arbitration Update*, N.Y. L.J., Mar. 28, 2001, at 3.
The first part of the Article explains the recent U.S. Court of Appeals for the Second Circuit case, *TCPIP Holding Company, Inc. v. Haar Communications, Inc.* The court held that TCPIP was not entitled to a preliminary injunction based on the Federal Trademark Dilution Act (FTDA) because the FTDA protects only marks that have a significant degree of distinctiveness and sufficient fame through extensive and long use. The court ruled that the mark, "The Children's Place" was highly distinctive and not famous enough to warrant an injunction. The second part of the Article discusses the case, *Tyco International Services v. Paul Quinn*, where Tyco

won a domain name/cybersquatting case based on Tyco's continuous use of the name Tyco, registration of the name Tyco, and the deceptive similarity between Tyco and Paul Quinn's website tycoventures.com. The name was directed to be transferred to Tyco.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{133} COURT REFORMS

Andrew Schepard, *An Introduction to the Model Standards of Practice for Family and Divorce Mediation*, 35 FAM. L.Q. 1 (2001).
The American Bar Association has adopted the Model Standards of Practice for Family and Divorce Mediation in order to define good mediation practice in the profession, and this Article provides an introduction to the standards. The Article specifically includes a discussion of the Standards' significance, the process involved in developing them, the issues they address, and their most important innovations. The Article also discusses the future of family lawyers in mediation.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Andrew Schepard, *Beyond 'Best Interests'—ALI's Child Custody Dispute Resolution*, N.Y. L.J., Jan. 17, 2002, at 3.
This Article provides a comparison of Amican Law Institute's (ALI) Principles of the Law & Family Dissolution with New York law, specifically examining Chapter Two on post-divorce and separation parenting. The Article discusses the differences between ALI's proposal and New York law, stating that the ALI principles are a "substantial improvement" over New York law because they stress parental agreement, mediation (where appropriate), and do not use the term "custody," but rather refer to allocation.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Andrew Schepard, *Children's Best Interests and the Model Family Mediation Standards*, N.Y. L.J., Sept. 10, 2001, at 3.
This Article discusses changes in the Model Standards of Practice for Family and Divorce Mediation stipulating that a mediator should assist parents in determining what is in the best interests of the child. A mediator should see if the parents are willing to have the child participate by giving input.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Andrew Schepard, *Mediation Confidentiality: Communication Privilege Statute Needed*, N.Y. L.J., July 17, 2001, at 3.
This Article gives a synopsis of the Model Family Mediation Standards and the Uniform Mediation Act and urges New York lawmakers to adopt measures inspired by these two model statutory schemes. Specifically, the Author discusses the requirements of confidentiality between parties and mediators that the model schemes provide and notes that such requirements keep proceedings from becoming additional forums for adversarial warfare. The Author also notes that the model statutes are practically based in that they afford reasonable confidentiality exceptions for such things as threatened violence or proof of child abuse.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{132} CONFIDENTIALITY
{144} LEGISLATION

Andrew Schepard, *The Model Standards of Practice for Family and Divorce Mediation*, N.Y. L.J., May 15, 2001, at 2.
In February of 2001, the American Bar Association's (ABA) House of Delegates adopted Model Standards of Practice for Ramily and Divorce Mediators, signifying the recognition of the benefits of mediation in resolving family disputes in conjunction with the courts. Similar issues are of concern in New York and the action of the ABA supports the conclusion that family mediation would be successful in attempts to promote self-determination and resolve disputes in that state.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Mark K. Schoenfield, *Choosing ADR Practitioners: Some Philosophical Considerations*, 58 BENCH & B. MINN. 23 (2001).
Identifying and understanding the characteristics of potential mediators and arbitrators can be as important as deciding whether to pursue either course of action. Mediators and arbitrators often have attitudes, experiences, and goals that can have a determinative impact on the final resolution of disputes. A thorough understanding of these factors can help a party achieve its desired resolution once mediation or arbitration is pursued.
{21} MED: RELATED PROCESSES—GENERAL

Miranda A. Schreurs, *Competing Agendas and the Climate Change Negotiations: The United States, the European Union, and Japan,* ENVTL. L. REP., Oct. 1, 2001, at 11218.
This Article addresses the Bonn negotiotions over the Kyoto Protocol and climate change conditions. The Author thoroughly discusses the recent

developments in the international environmental dialogue and the changes in climate regulation that have resulted. The Author is highly critical of the current administration's rejection of the Kyoto Protocol and suggests that international pressure from current environmental leaders such as the European Commercial and Japan should convince the United States to adjust its policies.
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Jennifer L. Schulz, *Mediator Liability in Canada: An Examination of Emerging American and Canadian Jurisprudence*, 32 OTTAWA L. REV. 269 (2001).
Due to the successes of mediation programs, relatively few claims have been filed against mediators. In this Article, the Author examines those few decisions and suggests that mediators may be held civilly liable for the unauthorized practice of law, a breach of the relevant statute, a breach of the contract, or negligence in performing their services.
{114} 3RD PARTY: PRACTICE OF LAW
{138} ETHICS: GENERAL

Kenneth D. Schwartz, *After* Circuit City, *Are There Any Limits on Enforcing Arbitration Agreements*, EMPLOYEE REL. L.J., Autumn 2001, at 5 (2001).
In *Circuit City Stores, Inc. v. Adams*, the U.S. Supreme Court interpreted the Federal Arbitration Act (FAA) to encompass the vast majority of employment contracts. Consequently, this Article suggests that employers adopt arbitration programs as an alternative to costly litigation. To assist in this process, the Author discusses a number of issues, the resolution of which is necessary to ensure a legally binding result. These issues include: providing a procedurally fair process, ensuring that the agreement effectively implicates the FAA, and defining the proper scope of the arbitrator's authority.
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Kenneth D. Schwartz, *After* Circuit City*: Are There Any Limits on Enforcing Arbitration Agreements?*, EMPLOYEE REL. L.J., Autumn 2001, at 5.
This Article discusses the implications of the U.S. Supreme Court's decision in *Circuit City Stores, Inc. v. Adams*. The Author concentrates on the Court's holding that most arbitration agreements between employers and employees are enforceable under the Federal Arbitration Act (FAA). Schwartz argues

that with the backing of the FAA as a powerful enforcement tool, employers should focus on the crucial legal issues for drafting an arbitration program.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Jane Scoular & Charlie Irvine, *A Review of "Meeting in the Middle"*, 14 SCOT. L. TIMES 125 (2001).
This Article reviews Fiona Myers' and Fran Wasoff's report concerning the practices of mediators and solicitors in divorce proceedings. The Authors here claim that the limitations in the research design utilized in that report make the conclusions it draws regarding the convergence of the practice of mediators and solicitors unsafe. Limitations in the methodology, constructions of negotiation, and flaws in the simulated client method are the primary criticisms.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{151} ROLE OF LAWYERS

Franz-Jorg Semler, *German Arbitration Law: The 1998 Reform and Recent Case Law*, 8 J. INT'L ARB. 579 (2001).
This Article reviews recent changes to Germany's arbitration laws. The changes cover the form of arbitration clauses and their enforceability, competence of the arbitral tribune, the appointment of arbitrators, the involvement of state court in evidence gathering for arbitration, interim arbitration relief, and the enforcement of arbitration awards. The purpose of the law changes is to modernize German arbitration law and to make Germany a more appealing venue for international arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Gregory Shaffer, *Symbolic Politics and Normative Spins: The Link Between U.S. Domestic Politics and Trade-Environment Protests, Negotiations, and Disputes*, ENVTL. L. REP., Oct. 1, 2001, at 11174.
In response to recent protests against the World Trade Organization (WTO), this Author addresses the issue of how domestic policy often adversely affects international environmental conditions. Critical of conservative and laissez-faire approaches, Shaffer suggests that U.S. domestic policy should turn away from a focus on trade restrictions and move toward a more liberalized trade policy. By addressing the environmental problems within their own borders and by encouraging foreign environmental policies, Shaffer argues that developed Western nations will better serve the aims of the WTO.

{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Brian D. Shannon, *Confidentiality in Texas Mediations: Ruminations on Some Thorny Problems*, 32 TEX. TECH L. REV. 77 (2001).
This Article explores cases related to confidentiality in mediation under the Texas Alternative Dispute Resolution (ADR) Act and comments on the approach taken to confidentiality in the draft Uniform Mediation Act. The Author examines problem areas like disclosing mediation communication outside legal proceedings, using mediation communication as part of contractual defenses or claims, seeking disclosure in related criminal proceedings, confidentiality aspects of settlement agreements, and disclosure relating to alleged bad faith by one of the parties to a mediation. This Article uses hypothetical situations based on actual cases and actual experiences of the Author.
{132} CONFIDENTIALITY
{144} LEGISLATION

Daniel L. Shapiro, *A Negotiator's Guide to Emotion: Four Laws to Effective Practice*, GP SOLO & SMALL FIRM LAW., Sept. 2001, at 42.
This Article, by Daniel Shapiro, talks about what the Author considers to be the four emotions of negotiation. These emotions are as follows: perpetual emotion, complexity of emotion, variable expression, and diagnostic clarity. The Author goes on to explain these four phases and then elucidates their roles in the negotiation process.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

David Shapiro, *Tough Talking*, 145 SOLIC. J. 1036 (2001).
This Article considers the following issues in the context of choosing a mediator: the needs of English lawyers, subject matter expertise, ability to show parties they are incorrect, mediation preparation, multi-party mediation styles, confidentiality, impartiality, creating win-win solutions, and providing food to make the parties feel more comfortable.
{21} MED: RELATED PROCESSES—GENERAL
{92} SUBJ MATTER: INT'L

Lisa M. Sharrock, *The Future of Domain Name Dispute Resolution: Crafting Practical International Legal Solutions From Within the UDRP Framework*, 51 DUKE L.J. 817 (2001).
This Article discusses concerns with, and makes recommendations for, the Internet Corporation for Assigned Names and Numbers (ICANN), which is a nonprofit organization that manages the domain name system. It addresses

the Uniform Domain Name Dispute Resolution Policy (UDRP) and ways that ICANN can make it more efficient. The Author advocates that the UDRP should be amended to include specific examples of conduct that is in violation of the policy.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Murray Shaw, *Constructing an Adjudicated Settlement*, 46 J.L. SOC'Y SCOT. 27 (2001).
This Article notes that despite the Scottish government's ignorance of suggestions from experts that mediation is the most effective means of dealing with construction disputes in the country, the construction industry, through contractual provisions, has embraced the view that mediation is a proper first resort for handling matters in that industry. This Article specifically advocates mediation processes using solicitors who are well versed in construction issues to better insure adherence to proper legal and technical norms.
{21} MED: RELATED PROCESSES—GENERAL
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Alyssa H. Shenk, Note, *Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice*, 17 OHIO ST. J. ON DISP. RESOL. 185 (2001).
The Author argues that victim-offender mediation should include hate crimes. Restorative justice effects hate crimes resolution in the American criminal justice system, and victim-offender mediation has become the most widely employed form of restorative justice. An integrated paradigm of hate crimes legislation and victim-offender mediation is necessary to address and deter hate crimes.
{21} MED: RELATED PROCESSES—GENERAL
{82} SUBJ MATTER: CRIMINAL

Lee A. Sheppard, *Corporate Shelters Downplayed, Dispute Resolution Highlighted*, 93 TAX NOTES 177 (2001).
Deputy Assistant Treasury Secretary Pamela Olson addressed a group of corporate tax executives, discussing such problems as corporate tax shelters and failure of the government to answer important tax questions. When the Treasury and the Internal Revenue Service fail to write the necessary rules or write rules that are unclear and open-ended, important tax decisions are punted to the courts. Olson stressed that the administration is looking for faster dispute resolution and alternatives to expensive, inefficient litigation in court.

{87} SUBJ MATTER: GOV'T
{108} SUBJ MATTER: TAX

David D. Siegel, *New Rule Mandating the Arbitration of Fee Disputes Is in Effect*, N.Y. L.J., Jan. 9, 2002, at 1.
The Author discusses the effect of Rule 137, which extends the applicability of a rule requiring attorney fee disputes to be arbitrated to all categories of cases (instead of only matrimonial cases). Rule 137 went into effect on Jan. 1, 2002, but to the relief of many practitioners, it only applies to attorney/client relationships commencing after January 1, 2002. It requires fee disputes between $1,000 and $50,000 to be submitted to compulsory arbitration. However, claims involving "substantial legal questions," including professional malpractice or misconduct, are excluded.
{127} REQUIREMENTS: MANDATE TO USE
{144} LEGISLATION

Henry J. Silberberg & Robert Olson, *No, Mediation Is Not a Waste of Time; Understand This Effective, Often Swift Means of Dispute Resolution*, N.Y. L.J., June 25, 2001, at s6.
A number of useful, practical suggestions for mediation are put forward for the practitioner. The Authors provide insight as to the type of mediator that parties should engage, the types of documentation that should be exchanged, the option of using separate representation for mediation purposes, and how to reach an agreement that will stand.
{21} MED: RELATED PROCESSES—GENERAL
{114} 3RD PARTY: PRACTICE OF LAW
{151} ROLE OF LAWYERS

Richard J. Silk, Note, *Nonbinding Dispute Resolution Processes in Fisheries Conflicts: Fish Out of Water?*, 16 OHIO ST. J. ON DISP. RESOL. 791 (2001).
This Note stresses that non-binding dispute resolution aggravates fishery disputes due to the political nature of the dispute, scientific disagreements, and the fact that the decreasing size of the fisheries results in a constant need to revisit the issues. The Author discusses the strengths and weaknesses of international agreements tending toward binding arbitration. This discussion focuses on United Nations Convention on the Law of the Seas, the Food and Agriculture Organization Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the United Nations Agreement for Conservation and Management of Straddling Fish Stocks and Hightly Migratory Fish Stocks.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL

{92} SUBJ MATTER: INT'L
{84} SUBJ MATTER: ENVIRONMENT

Eileen Silverstein, *From Statute to Contract: the Law of the Employment Relationship Reconsidered*, 18 HOFSTRA LAB. & EMP. L.J. 479 (2001).
This Article addresses the extent to which the power of statutes in employment relationships are disappearing in the face of contractual relationships that waive statutory rights. First, the analysis centers on how contractual waivers are related to statutory regulation and the employment relationship. Second, the analysis shifts to whether contractual, rather than statutory, regulation of employment relationships is beneficial or not. Third, the Article discusses whether the waiver must be "knowing and voluntary" and what criteria may be needed.
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)

Prathiba M. Singh & Krishan Devashish, *The Indian 1996 Arbitration Act*, 18 J. INT'L ARB. 41 (2001).
This Article discusses therole of Indian courts in granting interim measures in arbitration controversies. These interim measures include receiver appointments, injunctions, and attachments of property. For the most part, Indian courts have not stepped in to resolve disputes that oginated outside the cournty. The Authors suggest that courts should become more active in granting interim measures, regardless of the origin of the action.
{92} SUBJ MATTER: INT'L

William K. Slate II, *Online Dispute Resolution: Click Here To Settle Your Dispute*, 56 DISP. RES. J. 8 (2001).
This Article focuses on the rise of e-commerce and the growing interest in online dispute resolution. It discusses the need to provide services in the business-to-business environment and the new types of disputes that are emerging. To provide guidelines for online dispute resolution, the American Arbitration Association developed an e-commerce protocol to manage the online disputes. The Article also addressed new services for e-commerce in technology areas that help make dispute resolution more efficient and provide useful information to all participants to help prevent disputes.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{21} MED: RELATED PROCESSES—GENERAL

Robert H. Smit, *The Newly Revised CPR Rules for Non-Administered Arbitration of International Disputes*, 18 J. INT'L ARB. 59 (2001).
In August of 2000, the Center for Public Resources Institute for Dispute Resolution (CPR) revised its rules on non-administered arbitration of international disputes. In this Article, the Author describes the rules and the deliberative process which gave rise to them. In doing so, the Author also highlights the changes he feels are the most significant. This Article also provides a copy of the new rules.
{92} SUBJ MATTER: INT'L

Murray L. Smith, *Costs in International Commercial Arbitration*, 56 DISP. RESOL. J. 30 (2001).
In determining what fees to award in international arbitration, the arbitrator should consider whether the parties put forth frivolous defenses and allegations, as well as misconduct by either side. Fees should be awarded to the winning party, but because the international arbitrator uses more of an equity rather than a common law approach, the arbitrator should evaluate other factors besides who won.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{124} COMPARISONS: CROSS-CULTURAL

Shelly Smith, Comment, *Mandatory Arbitration Clauses in Consumer Contracts: Consumer Protection and the Circumvention of the Judicial System*, 50 DEPAUL L. REV. 1191 (2001).
According to this Comment, under modern consumer law, many consumers are banned from using the judicial system and forced to submit claims through alternative dispute resolution mechanisms because they unknowingly signed an agreement to arbitrate disputes outside the judicial system. This Comment discusses the enforcement of mandatory arbitration clauses and the detrimental affect these clauses have on the rights of the consumer.
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robert Smith, *Mediating with Handkerchiefs: The New Model Standards for Divorce Mediation*, COLO. LAW., Jan. 1, 2002, at 69.
The Model Standards of Practice for Family and Divorce Mediation (MSPFDM) should be adopted in Colorado, where there is currently no regulation of who can be a mediator and where there is only one general set of standards for mediator conduct applicable to all forms of mediation. The MSPFDM has certain advantages including, greater specificity in standards to promote and ensure ultimate self-determination by the parties, qualification requirements which stress the need for family mediators to be

competent in understanding the effect of the conflict on the family and the cultural influences which may be implicated in any particular situation, heightened impartiality requirements, and standards stressing the need for resolutions which are in the best interest of the children among others.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{149} QUALITY CONTROL

Judith Solomon & Zeynep Biringen, *Another Look at the Developmental Research*, 39 FAM. & CONCILIATION CTS. REV. 355 (2001).
The Authors of this Article critically examine a set of guidelines for visistaion and csustody of young chidren in dirvorced and seperated families. The Authors suggest that more research is required before submitting to these guidelines. For example, they suggest that more, rather than fewer, transitions between parents are appropriate for very young children. The Authors also examine additional considerations like the difference in infant-mother and infant-father attachments.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Douglas Sondgeroth, *High Hopes: Why Courts Should Fulfill Expectations of Lifetime Retiree Benefits in Ambiguous Collective Bargaining Agreements*, 42 B.C. L. REV. 1215 (2001).
This Article explores the current state of World War II retiree medical benefit plans. It traces the history of these benefits by looking at their creation after the end of World War II and examining the reasons why the benefits are being trimmed down or even eliminated today. The Author argues that Congress should act to protect these benefits, but in the meantime, federal courts should protect them by allowing a rebuttal presumption that once a retiree shows the agreement providing the benefits is ambiguous, the benefit is vested.
{93} SUBJ MATTER: LABOR—GENERAL

David Spencer, *Mandatory Mediation Litigation Begins*, 39 LAW SOC'Y J. 56 (2001).
This Article details new legislation in New South Wales (Australia) that gives the courts great latitude to force parties into mediation. The Article further details the history of court actions challenging whether or not the courts can legally force such mediation in the first place.
{92} SUBJ MATTER: INT'L
{21} MED: RELATED PROCESSES—GENERAL

J.J. Spigelman, *Mediation and the Court*, 39 LAW SOC'Y J. 63 (2001).
The Chief Justice of New South Wales discusses the Chief Justices Council's adoption of a formal Declaration of Principles on Court-Annexed Mediation. Two of the major points of this Declaration address the qualifications of mediators and the new power of the court to compel parties to mediate in appropriate circumstances. As to mediator qualifications, the court recommends that they "normally" be court officers but also contemplates situations in which a judge may be permitted to mediate.
{21} MED: RELATED PROCESSES—GENERAL
{133} COURT REFORMS

Colby B. Springer, Comment, *Master of the Domain (Name): A History of Domain Name Litigation and the Emergence of the Anticybersquatting Consumer Protection Act and Uniform Dispute Resolution Policy*, 17 SANTA CLARA COMPUTER & HIGH TECH. L.J. 315 (2001).
This Article examines how courts have found jurisdiction over Internet corporations and describes newly created causes of action for the bad faith attempt to profit from a confusingly similar domain name. Additionally, a major focus is whether the World Intellectual Property Organization's procedures for resolving disputes will come out ahead of the federal Anti-Cybersquatting Consumer Protection Act of 2000.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{144} LEGISLATION
{79} SUBJ MATTER: CONSUMER

Theodore J. St. Antoine, Gilmer *in the Collective Bargaining Context*, 16 OHIO ST. J. ON DISP. RESOL. 491 (2001).
Professor St. Antoine argues that in bargaining agreements where unions and employers have agreed to make arbitration the sole means of resolving employer-employee disputes, claims that mandatory arbitration is unfair lose some of their force. While requiring single, non-union employees to sign mandatory arbitration agreements as a condition of employment may be questionable to some because there is not parity in bargaining power between the employee and employer, such arguments are not reasonable in the employer-union context.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Theodore J. St. Antoine, *The Changing Role of Labor Arbitration*, 76 IND. L.J. 83 (2001).
This Article examines three developments in arbitration of labor disputes. One major consideration is the degree to which unions and individuals waive

employee rights to pursue statutory claims in the courts by agreeing to mandatory arbitration clauses in labor contracts. Another concern is when it is permissible for a court to set aside an arbitrator's decision on public policy grounds. Lastly, the Author explores the prospect of using arbitration to enforce the Model Employment Termination Act, which, if adopted, would protect employees from discharge without good cause.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lamont E. Stallworth et al., *Discrimination in the Workplace: How Mediation Can Help*, 56 DISP. RESOL. J. 35 (2001).
Subtle or unconscious discrimination is prevalent in workplaces and there is virtually no legal remedy because it is an unintentional and subtle act. Redress is available to employees only if the employer has implemented an internal conflict management system. In light of this, Congress should adopt the National Employment Dispute Resolution Act that would require many employers to establish internal dispute resolution programs.
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Lisa Stansky, *ADR Is A-OK for Lawyers Who Seek To Avoid Typical Battles*, 30 STUDENT LAW. 6 (2001).
This Article discusses the growth of alternative dispute resolution (ADR) techniques in recent years, with particular emphasis upon the techniques of mediation and arbitration. It also discusses how labor and employment law, environmental law, and public contracts and utilities law are areas that have recently experienced significant growth in the usage of ADR techniques. It also includes a listing of a number of Internet sites that contain resources for learning more about alternative dispute resolution.
{136} ECONOMIC ADVANTAGES OF ADR
{151} ROLE OF LAWYERS

Joshua Stein, *The Art of Real Estate Negotiations*, 17 PRAC. REAL EST. LAW. 7 (2001).
This Article gives advice about how to effectively convince the other side in a real estate transaction that the position you are advocating is the best position. Tips include setting timetables, studying the opposing side, and fostering positive personal relationships with the other side.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

Gerald C. Sternberg & Donald V. Kozlovsky, *Court Considers Mandatory Fee Arbitration*, 74 WIS. LAW. 24 (2001).
This Article contains two differing viewpoints on the question of mandatory fee arbitration. Sternberg argues that mandatory fee arbitration will help effectuate the filing of fewer attorney grievances regarding fees, increase public confidence in the profession, and provide fair process to both parties. Kozlovsky argues that retaining Wisconsin's voluntary fee arbitration program would be wiser, mainly to avoid depriving lawyers of the right to litigate fee disputes.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Jean R. Sternlight, *Mandatory Binding Arbitration and the Demise of the Seventh Amendment Right to a Jury Trial*, 16 OHIO ST. J. ON DISP. RESOL. 669 (2001).
Discussing the tension between mandatory arbitration and the constitutional right to a jury trial, the Author notes that courts fail to follow the normal criteria for evaluating whether a waiver of the right to a jury is voluntary and knowing when mandatory arbitration agreements are involved. The Author argues that the two areas could be brought in line without overturning case law or discrediting a preference for arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS

Ian L. Stewart, *Mediation Confidential*, 53 FED. COMM. L.J. 509 (2001).
This Author discusses how arbitrators are exceeding the scope of the Uniform Domain Name Dispute Resolution Policy by having an overbroad definition of trademark, narrowing the definition of legitimate interests, and having a circular definition of bad faith. The Article also provides suggestions for saving the original dispute resolution policy through the exercise of restraint by dispute resolution providers.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{102} Public Policy

C. Evan Stewart, *Can We Escape the Arbitration Quagmire?*, N.Y. L.J., Dec. 26, 2001, at 1.
The Author characterizes arbitration as eerily resembling the civil litigation system it was designed to counterbalance. In support of this proposition, the Author discusses several recent developments, including inconsistent treatment by the courts.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Janet Stidman Eveleth, *Settling Disputes Without Litigating; Retired Judges Serve as Mediators*, 34 MD. B.J. 2 (2001).
This Article discusses the advantages of the practice of using retired judges as mediators. Several Maryland circuit courts require settlement conferences, and retired judges often play the role of mediator. The Article looks at the success of one retired judge and a recent case he was able to settle even before a lawsuit was filed. The experience and knowledge of these retired judges helps parties to settle without the expensive costs of going to trial.
{21} MED: RELATED PROCESSES—GENERAL

Thomas J. Stipanowich, Symposium, *Contract And Conflict Management*, 2001 WIS. L. REV. 831.
Focusing on contract related disputes, this Article's stated intent is to stimulate awareness and understanding of alternative dispute resolution (ADR) fundamentals, to encourage more thoughtful, helpful classroom dialogue and to identify new opportunities for scholarship. It discusses available ADR processes, their practical uses and limitations, their availability and appropriateness of "legal teeth," and the roles played by third party interveners.
{151} ROLE OF LAWYERS

James Stone & Jonathan Boonin, *The Supreme Court's Emerging Endorsement of Arbitration*, COLO. LAW., Sept. 1, 2001, at 67.
During its' 2000–2001 term, the U.S. Supreme Court decided four cases effecting arbitration. The Authors of this Article analyze the effect of these cases in the Supreme Court's growing approval of arbitration as a alternative to litigation. This Article places these cases in historical context and then looks at their present day practical effect
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{125} COMPARISONS: HISTORICAL

James Stone & Jonathan Boonin, *The Supreme Court's Emerging Endorsement of Arbitration*, COLO. LAW., Sept. 1, 2001, at 67.
This Article explains that traditionally, courts tended to view arbitration as a potentially dangerous threat to their jurisdiction. However, this Article contends that the U.S. Supreme Court's most recent decisions indicate the Court's endorsement of arbitration as a viable alternative to litigation. The Article further provides an assessment of the Court's most recent cases on arbitration, and considers their practical effect.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Julia B. Strickland et al., *Recent Developments in Consumer Financial Services Arbitration*, 118 BANKING L.J. 933 (2001).
This Article addresses the continuing trend in the consumer financial services industry to limit litigation through the insertion of arbitration clauses into credit agreements. The Authors discuss some of the recent developments in the law, with a focus on issues relating to the implementation of arbitration provisions with respect to existing credit agreements. The Article also analyzes court decisions falling on both sides of the debate over whether a lender may properly avoid class action liability through the use of an arbitration clause.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

John Sturrock & David Semple, *Mediating a Cultural Revolution*, 46 J.L. SOC'Y SCOT. 21 (2001).
Mediation is a flexible, voluntary, and private process in which a third party seeks to help negotiate a satisfactory outcome to the parties' dispute. It is quick and low cost, parties retain control, and it avoids publicity with creative resolution possibilities. Government disputes will now be dealt with by mediation in Scotland and the court is the last resort.
{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR
{127} REQUIREMENTS: MANDATE TO USE

Randall G. Styers, *Protestant Perspectives on Justice and Zealous Representation*, 28 FORDHAM URB. L.J. 1047 (2001).
In this Article the Author discusses whether a lawyer can zealously represent a client without violating the lawyer's religious or humanistic beliefs. The Article discusses issues raised by one of the most prominent and controversial Protestant theologians, Stanley Hauerwas, in his critique of liberal values. The Article concludes that in order to zealously represent their clients, lawyers must expect some challenge to their religious and moral beliefs.
{124} COMPARISONS: CROSS-CULTURAL
{151} ROLE OF LAWYERS

Simon Sugar, *Banking on Dispute Resolution*, 145 SOLIC. J. 338 (2001).
Litigation lawyers should consider using the English banking ombudsman scheme as part of an overall dispute resolution strategy. The scheme, primarily for bank customers, is free to use and the cases are decided on both the basis of legal principal and fairness. Thus, a complainant is better off

pursuing a remedy before the banking ombudsman when fairness and the law do not coincide.
{145} OMBUDSPERSON
{151} ROLE OF LAWYERS
{124} COMPARISONS: CROSS-CULTURAL

Matthew A. Swendiman, Note, *The EEOC Meditation Program: Panacea or Panicked Reaction?*, 16 OHIO ST. J. ON DISP. RESOL. 391 (2001).
This Article tracks the inception and development of the Equal Employment Opportunity Commission's mediation program. At the height of the program it was highly successful—resolving 1800 cases and obtaining millions in monetary benefits for discrimination victims. Despite budgetary cuts in recent years, the Author considers the mediation program a success and recommends its continuation and expansion.
{21} MED: RELATED PROCESSES—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{77} SUBJ MATTER: CIVIL RIGHTS

Sidney K. Swinson, *Alternative Dispute Resolution in Bankruptcy*, 36 TULSA L.J. 813 (2001).
Litigants in the bankruptcy setting are utilizing alternative dispute resolution (ADR). This Article discusses the authority of bankruptcy courts to implement ADR and it also outlines and explores why ADR is effective in bankruptcy practice. The Author concludes that bankruptcy attorneys will serve their clients well if they actively pursue the use of ADR instead of using the increasingly expensive avenue of litigation.
{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR

Symposium, *Fairness Issues in Negotiation*, 52 MERCER L. REV. 917 (2001).
The panel discusses issues of negotiation guidelines. First, the panel focuses on fairness issues and bad faith in the settlement process. The panel discusses settlements and how a lawyer deals with represented parties when the lawyer thinks a settlement offer is not being conveyed. The final topic the panel addresses concerns exploiting an opponent's mistake.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL

Symposium, *Limits of Misleading Conduct*, 52 MERCER L. REV. 859 (2001).
Through hypotheticals and discussion, the panel focuses on ethics in the context of negotiation and settlement. Specifically, the panel addresses false statements of material fact in the course of negotiation or settlement and

silence, omission, and the duty to disclose material facts. In addition, the panel members examine the attorney client privilege in this context.
{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Symposium, *The Arkansas Law Review Symposium on Alternative Dispute Resolution: Panel Discussion on Arkansas Alternative Dispute Resolution Developments*, 54 ARK. L. REV 273 (2001).
On February 9, 2001 the Arkansas Law Review and the University of Arkansas School of Law hosted the Arkansas Law Review Symposium on alternative dispute resolution (ADR). Professors James J. Alfini and Douglas H. Yarn were the featured speakers. The panel addressed new developments in ADR that may have been of interest to members of the Arkansas bar. Among the topics discussed by the professors was the Inter-Agency Mediation Project, a mediation program conducted between state workers and state agencies.
{74} SUBJ MATTER: GENERAL

Symposium, *Transnational Energy Litigation & ADR Methods*, 36 TEX. INT'L L.J. 2 (2001).
This Symposium panel energy and international law. Panalists encouraged international lawyers to look for and try to come under arbitration clauses in international contracts because arbitration usually leads to enforceable judgments and a more neutral forum. Panelists also discussed three available arbitration tribunalsand the settlment of international energy disputes.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Tadeusz Szurski, *Introducing UNCITRAL Model Law to Poland: Some Remarks on the Polish Law on International Commercial Legislation*, 18 J. INT'L ARB. 227 (2001).
Poland is one of the few European countries who have not revised their arbitration legislation to match the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration. Two laws adopting a version of the Model Law have been drafted and passed some hurdles. However, one version was dropped and the other, the Draft Law, has not been discussed recently and may not reach the Polish Parliament until the end of 2001 despite the Ministry of Justice's strong backing of the laws. The Article discusses Poland's current arbitration laws and analyzes the UNCITRAL Model Law. The Article then compares and contrasts the differences between the Draft Law and the Model Law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Tiziana Tampier, *Internation Arbitration and Impartiality of Arbitrators: The Italian Perspective*, 18 J. INT'L ARB. 549 (2001).
This Article discusses changes that Italy has recently made to its international arbitration laws. These changes have moved Italian law toward a pro-arbitration standpoint that is consistent with other countries. The new laws allow the parties to arbitration to have discretion on how to proceed, while at the same time give enough structure to the arbitration to resolve deadlocks. The Article concludes that the changes in Italian arbitration law make Italy a reliable venue for international arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Marshall H. Tanick, *The Year of the Arbitrator: Upholding the Arbitral Process*, BENCH & B. OF MINN., Nov. 1, 2001, at 27.
This Article discusses the effect of the five cases that were decided by the U.S. Supreme Court in its 2000–2001 term that considered issues relating to arbitration, with particular emphasis upon the implications of each of these decisions upon the practice of law in the state of Minnesota. It also includes in depth discussion of the Court's holdings in *Circuit City Stores, Inc. v. Adams*, *C & L Enterprises v. Citizen Band Potawatomi Tribe*, *Eastern Associated Coal Corp. v. United Mine Workers*, *Major League Baseball Players Ass'n v. Garvey*, and *Green Tree Financial Corp.-Alabama v. Randolph.*
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Joan R. Tarpley, Commentary, *ADR, Jurisprudence, and Myth*, 17 OHIO ST. J. ON DISP. RESOL. 113 (2001).
This Commentary discusses mediation as an alternative dispute resolution process and how resolutions and jurisprudence are affected by individually-held myths. Mediation is an effective process where bargaining markers are present. Myth is also present in mediation and can also be a bargaining marker. To illustrate, the Author discusses a litigated sexual harassment case and examines how mediation might have been applied to that situation.
{124} COMPARISONS: CROSS-CULTURAL

Garrett S. Taylor, *Read the Fine Print—Alabama Supreme Court Rules that Binding Arbitration Provisions in Written Warranties Are Okay,* 2001 J. DISP. RESOL. 165.
While the U.S. Supreme Court has held that claims arising under federal statutes may be subject to binding arbitration, it has set out a three part approach for determining when this is true. In *Southern Energy Homes, Inc. v. Ard*, the Court held that the Magnuson-Moss Act was superseded by the Federal Arbitration Act (FAA), in light of legislative history and other evidence to the contrary. The decision ignored obvious indications that the Magnuson-Moss Act was intended to supersede the FAA. This decision would run counter to the purpose of the Magnuson-Moss Act, which was to protect consumers.
{133} COURT REFORMS
{144} LEGISLATION

Margaret Graham Tebo, *One for the Books: Read Publishing Contracts Carefully for Clients with the Write Stuff,* A.B.A. J., June 2001, at 70.
This Article discusses the need to read publishing contracts carefully. The royalty rate, grant clause, and duration clause are all used by publishers to take rights away from the unwary writer. This Article gives advice about clauses for which an attorney should be on the lookout.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Louise Teitz, *Providing Legal Services for the Middle Class in Cyberspace: The Promise and Challenge of On-line Dispute Resolution*, 70 FORDHAM L. REV. 985 (2001).
Technology and the Internet has created a market of legal services for the once excluded middle-class. This market has broadened with increased use of dispute resolution. Although on-line dispute resolution (ODR) is popular and inexpensive, the traditional notions of law are not easily transferable in cyberspace. This Article discusses the types of ODR services available to the middle-class and the use of standards and regulations in cyberspace to create client confidence in this new system.
{114} 3RD PARTY: PRACTICE OF LAW
{21} MED: RELATED PROCESSES—GENERAL
{138} ETHICS: GENERAL

Russell Thirgood, *A Critique of Foreign Arbitration in Japan*, 18 J. INT'L ARB. 178 (2001).
This Article provides a brief introduction to the general features of foreign arbitration in Japan. The Author examines those features referred to as being

uniquely Japanese, including an analysis of the concilio-arbitration model. The Article examines a number of current themes relating to international commercial arbitration in Japan to distinguish between myth and reality. The themes discussed include foreign party representation, costs and delay associated with arbitrations, and the critique of inadequate and archaic Japanese laws.
{124} COMPARISONS: CROSS-CULTURAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Steven Thompson, *Olympic Team Arbitrations: The Case of Olympic Wrestler Matt Lindland*, 35 VAL. U. L. REV. 407 (2001).
This Article is a case study of sports arbitration proceedings in a Greco-Roman wrestling dispute. Matt Lindland was competing for a spot on the U.S. Olympic Team in Sydney when the deciding match ended in controversy. Lindland took the outcome to sports arbitration. This Article gives the account of Lindland's lawyer with regard to the proceedings—rranging from basic wrestling grievances to the U.S. Supreme Court. This Article also includes a discussion of the faults of sports arbitration's current procedural paths.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Dean B. Thomson, *A Disconnect of Supply and Demand: Survey of Forum Members' Mediation Preferences*, 21 CONSTRUCTION LAW., Fall 2001, at 17 (2001).
The use of mediation in the field of construction is widespread and growing. Division One of the Forum on the Construction Industry administered a survey to Forum members regarding their opinions and preferences concerning mediation. This Article reports and discusses the results of the survey.
{21} MED: RELATED PROCESSES—GENERAL
{80} SUBJ MATTER: CONSTRUCTION

Christopher P. Thorman, *Workers Are Blocked, Not Barred, From Court*, TRIAL, Oct. 1, 2001, at 18.
In an examination of mandatory arbitration clauses in employment contracts, this Article introduces an argument that the U.S. Supreme Court's decision in *Circuit City Stores, Inc. v. Adams* does not completely preclude litigation of employment disputes. Though recognizing the difficulty of challenging mandatory arbitration clauses, the Author presents examples of successful challenges in an effort to demonstrate that the door is still open litigation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{133} COURT REFORMS
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Joshua H. Threadcraft, Comment, *The Class Action Settlement: When the Good Can Become the Bad and the Ugly*, 25 J. LEGAL PROF. 227 (2001).
Class action litigation tests the boundaries of our adversarial judiciary system. Plaintiff's attorneys, for example, are required to represent the sometimes conflicting interests of a vast number of class members. This Article discusses the ethical obligations arising out of such representation. Specifically, the Author attempts to determine the extent to which class counsel must first notify and receive the consent of class members before entering into a settlement. Additionally, the Author seeks to establish the point where the conflicting interests of class members require the appointment of outside counsel.
{121} SETTLEMENT: AUTHORITY
{138} ETHICS: GENERAL

Carrie-Anne Tondo et al., Note, *Mediation Trends: A Survey of States*, 39 FAM. CT. REV. 431 (2001).
This Note is a study of mediation programs that have been implemented by states in family disputes. Specifically, this Note addresses mediation in the context of family dissolution. Based upon this extensive study of state law, the Authors offer recommendations for the implementation of mediation in family courts. These recommendations pertain to topics such as the qualities of mediators, fee arrangements, selection of mediators, the discretion of courts, and whether mediation is generally favorable in certain areas of dispute.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES—GENERAL

Charles Toutant, *A Homespun Remedy That Works*, N.J. L.J., Aug. 20, 2001, at 1.
The civil referee program established in New Jersey's Burlington County has played a significant role in promoting settlement and reducing case backlog. Approximately seventy-five percent of the cases directed through the pilot program settle before trial, compared with thirty percent of those not heard by the referee. The referee also issues scheduling orders and handles discovery disputes, thus freeing judges for more complex matters.
{133} COURT REFORMS

Charles Toutant, *As Attorney Population Booms, Grievances Remain in Check*, N.J. L.J., Sept. 3, 2001, at 5.
This Article discusses legal fees and ethics as the New Jersey attorney population increases rapidly. The Article states that according to the Annual Report of the State's Office of Attorney Ethics, as the attorney population in New Jersey continues to soar, the volume of misconduct allegations against lawyers has remained steady from 1995 to 2000, and the fee disputes decreased significantly. Grievances against lawyers by clients, colleagues, and judges has remained steady. The report credits this decrease in requests for fee arbitration to strict rules governing fees and ethics training for lawyers.
{138} ETHICS: GENERAL

Charles Toutant, *No-Work, No-Pay Rule Stricken for Public Employees*, N.J. L.J., July 16, 2001, at 1.
Toutant provides a detailed analysis of the recent New Jersey Supreme Court decision that reinstated an award in arbitration of back pay to workers for overtime. The no-work, no-pay rule that was discarded by the decision made it easier for an employer not to comply with contractual rights of an employee. The Article expresses the importance of the decision in preserving and honoring the sanctity of a contract.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Charles Toutant, *Workplace Arbitration Agreements Get a Charge Out of* Circuit City, N.J. L.J., April 23, 2001, at 5.
The Author briefly presents opposing views of mandatory employee arbitration agreements. The discussion centers primarily around the U.S. Supreme Court's decision in *Circuit City Stores, Inc. v. Adams*, holding that arbitration clauses in employment agreements are enforceable despite limiting language in the Federal Arbitration Act. The Author presents this case as a last-ditch effort for employment lawyers to stem what may be an irreversible tide. However, the narrow 5 to 4 ruling has not removed all doubt.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{93} SUBJ MATTER: LABOR—GENERAL

Trade Union Recognition 3: Derecognition and Change, 657 INDUS. REL. L. BULL. 2 (2001).
This Article discusses the provisions in Schedule A to the Trade Union and Labour Relations (Consolidation) Act 1992 that provide for the modification or abandonment of the bargaining unit to which a declaration of statutory

recognition relates, in light of subsequent changes in the nature, structure, organization, and/or size of the business carried out by the employer. It analyzes the grounds on which employers and/or workers may seek de-recognition of a statutorily recognized union or unions.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Leon E. Trakman, *Appropriate Conflict Management*, 2001 WIS. L. REV. 919.
This Article proposes that alternative dispute resolution (ADR) that is annexed into the justice system may risk falling into an abyss of legal form. There are philosophical differences between litigation and alternative dispute resolution and the determination of the appropriate method of conflict management must occur through the balancing of ends and means. Annexation of ADR for inappropriate reasons is wrong and should be avoided in order to best advance the interest of the parties.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS

Mary Rebecca Tyre, *Arbitration: An Employer's License to Steal Title VII Claims?*, 52 ALA. L. REV. 1359 (2001).
This Article discusses the Federal Arbitration Act (FAA) and the inconsistency of the federal circuits in applying the FAA to employees' statutory claims in Title VII suits. *Gilmer v. Interstate/Johnson Lane Corp.* held that arbitration of an ADEA claim may be compelled pursuant to an agreement in the employee's securities registration application and the Authors discusses the purpose and intent of Title VII compared to the reasoning in *Gilmer*.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: LABOR—EMPLOYMENT (NON-UNION)
{93} SUBJ MATTER: LABOR—GENERAL

Mark Umbreit et al., *The Impact of Victim-Offender Mediation: Two Decades of Research*, FED. PROBATION, Dec. 1, 2001, at 29.
Over the past twenty years over 1300 victim-offender mediation programs have been implemented in 18 countries. Although more research is required, evaluation reports from 14 states, four Canadian provinces, England, Scotland, and New Zealand show that victim-offender mediation participants view the process as fair and satisfying and that victim-offender mediation deters juvenile offenders from committing future criminal acts.
{82} SUBJ MATTER: CRIMINAL
{21} MED: RELATED PROCESSES—GENERAL

Jocomijn. J. van Haersolte-Van Hof, *The Arbitration Exception to the Brussels Convention: Further Comments*, 18 J. INT'L ARB. 27 (2001).
The Author examines the problems created by the fact that the Brussels Convention does not deal directly with arbitration. After discussing nine specific topic areas where problems arise, the Author offers possible solutions. Among the solutions brought forward, the Author suggests an amendment to the current Convention to help solve the procedural quagmires that have arisen in the area of arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Katherine Van Wezel Stone, *Dispute Resolution in the Boundaryless Workplace*, 16 OHIO ST. J. ON DISP. RESOL. 467 (2001).
Professor Stone discusses the use of arbitration in the workplace. Already, arbitration is frequently used to decide disputes in the workplace and it is likely to continue to grow in the future. Professor Stone details several proposals for making arbitration an effective and fairer means of dispute resolution in the future.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Edwin Vermulst & Polya Mihaylova, *EC Commercial Defence Actions Against Textiles from 1995 to 2000: Possible Lessons for Future Negotiations*, 4 J. INT'L. ECON. L. 527 (2001).
This Article explores whether proposed changes to the World Trade Organization (WTO) Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures would have any practical effect, particularly in respect to developing countries. The Article examines a case study of anti-dumping and countervailing actions taken by the European Union against textiles products from 1995–2000 and concludes that the amendments would not necessarily have any practical effect. The Author suggests some amendments that would affect almost all cases.
{92} SUBJ MATTER: INT'L

Eileen Vernon, *Arbitration in the Energy/Mineral Field: Customizing the Clause*, 56 DISP. RES. J. 48 (2001).
This Article is actually a chapter from the Proceedings of the Twenty-First Annual Energy & Mineral Law Institute, 2001, that has been reprinted. The Article outlines a step-by-step manual to constructing an arbitration clause in the energy and minerals industry, which encompasses all pieces needed to establish an ideal legal system. The Article suggests specific additions necessary for inclusion in the arbitration clauses to minimize disputes. The

Article also outlines the best procedures to follow to prevent alienating parties and decreasing the expediency of dispute resolution.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Lauren J. Wachtler, *Representing Clients in Automobile Accident Arbitrations*, 12 WIS. L. REV. 45 (2001).
This Article details the arbitration procedure put in place by Internet Corporation for Assigned Names and Numbers (ICANN) to deal with domain name disputes. The Author outlines the three elements a complainant must prove in order to be successful in obtaining relief.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Ian N. Duncan Wallace, *Tender Call Obligations in Canada*, 117 LAW Q. REV. 351 (2001).
The Author discusses the Supreme Court of Canada's 2000 opinion in *Martel Building Ltd. v. Canada*. The court's opinion in this case centers on the duties required in negotiation, the tendering process, and bid evaluation. The court finds that Canadian law recognizes no duty of care in pre-contract negotiations between commercial negotiating parties. The Author characterizes the opinion as a review of important principles of duty in both contract and tort law.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL—GENERAL
{110} SUBJ MATTER: OTHER TORTS
{76} SUBJ MATTER: COMMERCIAL

Stephen J. Ware, *The Effects of* Gilmer*: Empirical and Other Approaches to the Study of Employment* Arbitration, 16 OHIO ST. J. ON DISP. RESOL. 735 (2001).
Noting the limited number of empirical studies regarding the effect of mandatory arbitration on employees and the fact that both sides of the debate are using the same studies in support of their arguments, the Author argues that empirical studies are not well suited to explain this relationship. Instead, the Author examines employment arbitration under an employment discrimination framework and concludes that the distinctions between arbitrated and litigated cases makes it difficult to compare them to determine the benefits of arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Stephen J. Ware, *Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements*, 2001 J. DISP. RESOL. 89.
Although arbitration clauses have been criticized as being anti-consumer, such agreements may in fact save consumers money. Because arbitration is less expensive than litigation, businesses may save money by having consumer disputes arbitrated and subsequently reflect such savings in the price of goods. By imposing impediments in arbitration, such as requiring class actions, capping consumer fees, and requiring substantial discovery, courts will reduce the cost savings to consumers that arbitration agreements provide.
{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR
{137} EFFECTS OF PROCESS ON NON-PARTICIPATORY PARTIES

A. Michael Weber, *Arbitration for Employment Disputes;Courts Provide Guidance on Crafting Agreements That Stand Up to Challenge*, N.Y. L.J. June 25, 2001, at s4.
The Author provides a summary of recent decisions that clarify the nature of the use of arbitration in the employment context. Specifically, he addresses challenges to mandatory arbitration clauses, fee arrangements, and procedural safeguards. Through the discussion of cases, the Author makes suggestions for developing enforceable arbitration clauses.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Steven Weller et al., *Fostering Culturally Responsive Courts; The Case of Family Dispute Resolution for Latinos*, 39 FAM. CT. REV. 185 (2001).
The Authors examine the results of a study conducted to determine ways in which mediation services can be adapted to better suit the needs of Latino families in family disputes such as child custody and visitation cases. The ways in which mediation services in the United States have been structured to effectively deal with the needs of Anglo-Americans in resolving family disputes are examined, along with ways in which the needs of Latino Americans in resolving family disputes may differ from the needs of Anglo-Americans in resolving such disputes.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES—GENERAL

Trevor Wellington & Vincent Canciello, *Settling with the IRS: New Avenues Expedite Conflict Resolution*, 80 MICH. B.J. 48 (2001).
The Internatl Revenue Service (IRS) has developed several new ways to resolve conflicts with taxpayers more expediently. The taxpayer can take

disputes to a manager or request review by the national office. An early referral system allows taxpayers to appeal controversial issues while the IRS is deciding them. Appeals may take the form of litigation or mediation. Pre-filing initiatives allow the IRS and taxpayers to agree on controversial issues before returns are filed. The IRS is also starting to implement programs allowing for comprehensive resolution of issues across industries, spanning time, or unrelated issues within the same company.
{108} SUBJ MATTER: TAX
{87} SUBJ MATTER: GOV'T
{21} MED: RELATED PROCESSES—GENERAL

Nancy Welsh, *Making Deals in Court-Connected Mediation: What's Justice Got To Do with It?*, 79 WASH. U. L.Q. 787 (2001).
This Article argues that, particularly within the context of courts, mediation should be expected to deliver to disputants an experience of justice, more commonly referred to as procedural justice. The Author asserts that choices need to be made to keep court-connected mediation from becoming just another bargaining session. This Article explores the procedural attributes that trigger enhanced perceptions of procedural justice and the effect of these perceptions.
{21} MED: RELATED PROCESSES—GENERAL

Maureen A. Weston, *Checks on Participant Conduct in Compulsory ADR: Reconciling the Tension in the Need for Good-Faith Participation, Autonomy, and Confidentiality*, 76 IND. L.J. 591 (2001).
The Author explores various policy issues surrounding participant conduct and misconduct in compulsory alternative dispute resolution. The Author proposes a standard for a good-faith participation requirement in private alternative dispute resolution and a method to bring together the policies of good-faith participation, autonomy, and confidentiality.
{21} MED: RELATED PROCESSES—GENERAL
{127} REQUIREMENTS: MANDATE TO USE
{149} QUALITY CONTROL

John G. White, *ICANN's Uniform Domain Name Dispute Resolution Policy in Action*, 16 BERKELEY TECH. L.J. 229 (2001).
The Internet Corporation for Assigned Names and Numbers' (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP) was designed to resolve disputes over Internet domain names through streamlined administrative proceedings. To be successful a complainant must prove, inter alia, that the domain name is being used in bad faith. This factor is problematic when applied to passive warehousing, a type of cybersquatting

in which the domain name is registered but never used. The Author explains the application of the "inaction doctrine" under which mere inactivity by the registered owner in certain circumstances is an indicator of bad faith use.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Therese L. White & Bill White, *Managing Client Emotion: How a Mediator Can Help*, 56 DISP. RES. J. 15 (2001).
This Article focuses on how mediators can be used to help resolve more cases efficiently by managing client emotions. It gives suggestions for what to do when a client's emotions take over. The Article stresses the need for the client's emotions to be expressed in order to face the reality of the dispute. The Article also focuses on using a mediator to meet the client's emotional needs. In doing so, a monetary solution is not always necessary. The Article provides a good alternative to cutting out emotions and focusing on the facts, which is commonly done by attorneys, by using a mediator to manage emotions and meet the needs of the client.
{21} MED: RELATED PROCESSES—GENERAL
{151} ROLE OF LAWYERS

Robert S. Whitman, *Litigating Against the EEOC After* Waffle House, N.Y. L.J., Feb. 5, 2002, at 1.
In *EEOC v. Waffle House*, the United States Supreme Court held that the Equal Employment Opportunity Commission (EEOC) has exclusive jurisdiction over charges for 180 days after filing. The individual with a work-related claim cannot sue separately, but may be involved in the suit brought by the EEOC. The EEOC may decide to seek monetary damages for the individual. An arbitration agreement an employee signed will not bind the EEOC in taking action after the employee filed a timely complaint with it.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{133} COURT REFORMS
{128} REQUIREMENTS: STATUTORY OR RULES

Katie Wiechens, Comment, *Arbitrating Consumer Claims Under the Magnuson-Moss Warranty Act*, 68 U. CHI. L. REV. 1459 (2001).
The Federal Arbitration Act (FAA) acts as a default rule and requires the enforcement of agreements to arbitrate any statutory claim absent contrary congressional directive. The Magnuson-Moss Warranty Act (MMWA) states that "informal dispute settlement procedures" established by the manufacturer must be exhausted before a consumer can bring his claim to court. The MMWA leaves the interpretation of "informal dispute settlement procedures" to the FTC, which does not include arbitration within this

category; thus, there is conflict with the FAA. However, an agency interpretation of a statute which conflicts with the FAA should not be relevant, unless the agency is acting pursuant to an explicit delegation from Congress.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{128} REQUIREMENTS: STATUTORY OR RULES
{144} LEGISLATION
{79} SUBJ MATTER: CONSUMER

Dennis R. Williams, *Dispute Resolution Alternatives for the Cyberconsumer*, 65 KY. BENCH & B. 18 (2001).
The difficulties in resolving disputes between parties who are far away are exacerbated by Internet commerce disputes as questions arise about personal jurisdiction and the validity of "terms of use" statements that may profess to disclaim liability, indemnify the supplier, or supply choice of law and forum clauses. In the future, one likely solution to these problems will be through implementation of online alternative dispute resolution programs, of which two providers already exist. However, this tool is yet to be fully developed and implemented and online consumers should remain wary.
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Gary Williams, Note, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 OHIO ST. J. ON DISP. RESOL. 819 (2001).
After explaining the estate planning process, the Author compares the negative effect of traditional litigation with the mediation processes. The Author concludes that the emotional nature of family disputes in the estate planning context lend themselves to resolution through confidential, non-confrontational mediation.
{21} MED: RELATED PROCESSES—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Neil Williams & Andrew Gotting, *The Interrelationship Between the Industrial Power and Other Heads of Power in Australian Law*, 20 AUSTRALIAN B. REV. 264 (2001).
Looking at a number of weaknesses in the Australian system of industrial relations, this Article focuses on the legislative attention that has been initiated to correct those weaknesses. Previously based upon the conciliation and arbitration power of the Australian constitution, the system of industrial relations is being regulated via other heads of constitutional power, such as the trade and commerce power, the corporations power, and the external

affairs power. This Article suggests that industrial relations in the new century will be based predominantly on powers other than conciliation and arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{87} SUBJ MATTER: GOV'T
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Tony Willoughby, *The Uniform Dispute Resolution Policy for Domain Names: From the Perspective of a WIPO Panelist*, TRADEMARK WORLD, Feb. 2001, at 34.
This Article details the arbitration procedure put in place by Internet Corporation for Assigned Names and Numbers (ICANN) to deal with domain name disputes. The Author outlines the three elements a complainant must prove in order to be successful in obtaining relief and the real life problems he has faced with each element when reaching his decisions. Finally, the Author contends that the process is a success, but could be improved with a few drafting improvements and supplemental publications.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{76} SUBJ MATTER: COMMERCIAL

Barbara Wilson, *When Nothing Is a Good Thing To Say—The Silent Mediator*, 31 FAM. L. 701 (2001).
This Article gives advice concerning the use of silence as a mediation tool. While recognizing that words are an important part of a mediator's role, using silence and non-verbal body language can be important and effective in communicating signals while sometimes also providing time for reflection and a needed "cooling-off" period.
{21} MED: RELATED PROCESSES—GENERAL

Michael Wilson, *FOS: Investment Division*, 145 SOLIC. J. 365 (2001).
The Author examines the different services under the umbrella of the Financial Ombudsman Service (FOS) as of April 2001. By November 2001, three separate ombudsman services should be formally merged under a new set of rules. The Author discusses mortgage endowment complaints, FOS's calculation of compensation for pension reviews, and time limits.
{145} OMBUDSPERSON

Matt Wise, Note, *Separation Between the Cross-Practice of Law and Mediation: Emergence of Proposed Model Rule 2.4*, 22 HAMLINE J. PUB. L. & POL'Y 383 (2001).
This Note gives great detail regarding mediation practices and explores whether there is a need for a set of model rules to govern mediation processes nationwide. Citing facts that show that many mediators have backgrounds and experience in private or public advocacy, and concerns that attorney-mediators do not know under which circumstances they are allowed to perform duties typically associated with the practice of law, the Author suggests that the American Bar Association's proposed Rule 2.4 of the Model Rules of Professional Conduct is necessary to provide guidance to lawyers acting as cross-practitioners of law and mediation.
{21} MED: RELATED PROCESSES—GENERAL
{114} 3RD PARTY: PRACTICE OF LAW
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Roger C. Wolf, *ADR and Solos*, 34 MD. B.J. 36 (2001).
This Article discusses the new field of alternative dispute resolution and how to integrate alternative dispute resolution (ADR) into a solo practice. This Article discusses how to prepare clients for mediation, as well as confidentiality issues, and provides a warning that all lawyers will need to become familiar with ADR because of its increasing popularity.
{21} MED: RELATED PROCESSES—GENERAL
{136} ECONOMIC ADVANTAGES OF ADR
{155} TEACHING

Jeffrey Scott Wolfe, *Across the Ripple of Time: The Future of Alternative (or Is It "Appropriate") Dispute Resolution*, 36 TULSA L.J. 785 (2001).
This Article explores the future of alternative dispute resolution in a transforming "information age." The Author asserts that the future of alternative dispute resolution is one of transition, where traditional systems are integrated into a larger whole. The Author concludes that, in the future, a spectrum of dispute resolution methodologies must address and adapt to the needs of an increasingly dynamic and complex society.
{74} SUBJ MATTER: GENERAL

Peter Y. Wolfe & Kelly R. A. Mullen, *Mediation in the Probate Court*, 42 N.H. B.J. 32 (2001).
The Authors discuss the inherent personal relationship nature of probate, and suggest that mediation is ideal for resolving these disputes by keeping the dispute out of public record, helping family members to understand each

other, preserving their relationships, and finding a solution that is beneficial to all parties. Their analysis proposes a low-conflict, "interest-based" approach to mediation where individual interests are presented to reach a common settlement rather than attempting to reach a resolution based upon legal rights and fault. They further advocate that probate mediators should be able to understand the complex dynamics and emotions of family disputes.
{101} SUBJ MATTER: PROBATE
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Erica F. Wood, *Dispute Resolution and Dementia: Seeking Solutions*, 35 GA. L. REV. 785 (2001).
This Article discusses the resolution of disputes that involve persons with dementia and how the dispute resolution spectrum applies to this population. The Article explores legal and ethical issues that arise when dispute resolution is applied to this population. Some of the specific issues examined include capacity, neutrality, the uneven table, and confidentiality.
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL
{145} OMBUDSPERSON

Robert W. Wood, *Why Every Settlement Agreement Should Address Tax Consequences*, 92 TAX NOTES 405 (2001).
This Article reviews several cases from varying districts to determine the danger of avoiding specification of tax information in settlement agreements. Wood evaluates why claims are viewed as taxable or not and the litigation that results from poorly written severance policies and other agreements. Specifically, the Article a focuses on the need to allocate the payment clearly to avoid court disputes over what is and is not taxable in the settlement agreement.
{108} SUBJ MATTER: TAX
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Douglas H. Yarn, *Lawyers Ethics in ADR and the Recommendation of Ethics 2000 To Revise the Model Rules of Professional Conduct: Considerations for Adoption and State Adoption*, 54 ARK. L. REV 207 (2001).
The American Bar Association has recently finished a review known as the "Ethics 2000 Commission" of the Model Rules of Professional Conduct and recommended that revisions be made to address the special ethical problems faced by lawyers in alternative dispute resolution. The benefit of adopting such rules would be that a standard of legal ethics would be imposed on neutrals.
{102} SUBJ MATTER: PUBLIC POLICY

Yves Brulard & Yves Quintin, *European Community Law and Arbitration: National Versus Community Public Policy;* 18 J. INT'L ARB. 533 (2001).
This Article discusses a recent decision by the European Court of Justice with respect to arbitration awards. Now, a party can take an award to any member states' court and the court will be required to review, ex officio, the arbitration award in light of the community laws that apply in that member state. Essentially, the award establishes the arbitrator's duty to apply overall European Union public policy in making decisions.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Richard L. Zaffiro, *ADR: Do Trials Still Matter?*, 74 WIS. LAW. 14 (2001).
This Article presents the alternative dispute resolution (ADR) experience in Milwaukee County, Wisconsin from the viewpoints of the four primary groups involved in mandatory ADR for personal injury cases—plaintiff's attorneys, defense counsel, ADR providers, and judges. Although many different styles of mediation are used, all involved agree that the number of trials is down and that despite the recent lack of informal settlements, people are frequently satisfied with the formal mediated settlements.
{136} ECONOMIC ADVANTAGES OF ADR
{127} REQUIREMENTS: MANDATE TO USE

Bruce Zagaris, *Issues Low Tax Regimes Should Raise When Negotiating with the OECD*, 22 TAX NOTES INT'L 523 (2001).
The Article deals with the recent attempt by the OECD to enact anti-tax competition legislation. Zagaris outlines the main strategic issues behind the legislation and presents the view that the new proposal should be greeted with extreme caution by all countries. The Author suggests that all countries should be wary of surrendering tax sovereignty to an international organization; this is especially true for the many countries who, for one reason or another, have not had a prominent role in the process of formulating the current proposal.
{108} SUBJ MATTER: TAX
{92} SUBJ MATTER: INT'L

David Zaslowsky, *Circuits Are Split on Review of Arbitration*, N.Y. L.J., Feb. 20, 2002, at S6.
Cases involving judicial review of arbitration awards encompass conflicting principles of the freedom to contractually agree on the arbitration process verses the principle of deference to an arbitrator's decision. Recent cases go different directions on these issues. The most recent cases include: *Bowen v. Amoco Pipeline Co. and Roadway Package Systems, Inc. v. Kayser.* It

appears the U.S. Courts of Appeals for the Third, Fifth, and Ninth Circuits will enforce judicial review liberally. The Tenth Circuit is likely to stick to the contractual agreement between the parties. The Seventh and Eighth circuits might go the same direction as the Tenth.
{128} REQUIREMENTS: STATUTORY OR RULES
{133} COURT REFORMS
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Perry A. Zirkel & Andriy Krahmal, *Creeping Legalism in Grievance Arbitration: Fact or Fiction?*, 16 OHIO ST. J. ON DISP. RESOL. 243 (2001).
Zirkel and Krahmal report the results of a study measuring growth trends of legalism in grievance arbitration. But for two exceptions, indicators of legalism show increases from the 1970s to the late 1990s. Examples of increased legalism include total time elapsed for the process, the use of briefs, and post-hearing briefs. The Authors urge discussion amongst arbitrators, disputing parties, and supporting organizations concerning whether these legalistic trends result in negative effects for arbitration as a grievance resolution option.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Jayne Zuberbuhler, *Early Intervention Mediation; The Use of Court-Ordered Mediation in the Initial Steps of Divorce Litigation to Resolve Parenting Issues*, 39 FAM. CT. REV. 203 (2001).
The Author examines the results of a study conducted by the Court of Domestic Relations of Hamilton County, Ohio. The study involved court-ordered mediation for some divorcing couples in the county who could not resolve child custody and visitation disputes within six weeks of filing for divorce. The project resulted in the resolution of more custody and visitation cases in less time with court-ordered mediation than without it.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{136} ECONOMIC ADVANTAGES OF ADR